

EXHIBIT 2

**Depo-O'Donnell V Gonzales, 04-40190-FDS - Depo of David Winn -
09/15/05**

APEX Reporting

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**CONDENSED TRANSCRIPT AND CONCORDANCE
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[2]
[3] IN THE UNITED STATES DISTRICT COURT
[4] FOR THE
[5] DISTRICT OF MASSACHUSETTS

[6]
[7]
[8] COLLEEN O'DONNELL.)
[9] Plaintiff.)
[10] -v-) CIVIL ACTION NO.
[11] ALBERTO R. GONZALES.) 04-40190-FDS
[12] Attorney General.)
[13] U.S. Department of Justice.)
[14] Defendant.)

[15] THE ORAL DEPOSITION OF DAVID L. WINN.
[16] held pursuant to Notice, and the applicable provisions of
[17] the Federal Rules of Civil Procedure, before Marilyn
[18] Franklin, a Court Reporter and Notary Public, within and for
[19] the Commonwealth of Massachusetts, at FMC Devens,
[20] Ayer, Massachusetts, Massachusetts, on Thursday, September
[21] 14, 2005, commencing at 10:04 a.m.

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[23]
[24]
[25]

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[1] PRESENT:
[2] On Behalf of the Plaintiff:
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[4] Cooley, Shrair P.C.
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[8] On Behalf of the Defendant:
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[15] KELLY L. McDONALD, ESQ.
[16] Assistant General Counsel
[17] Federal Bureau of Prisons

[18] ALSO PRESENT:

[19] Colleen O'Donnell

[20]
[21]
[22]
[23]
[24]
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STIPULATIONS

[1] IT IS HEREBY STIPULATED AND AGREED TO.
 [2] by and between the parties and their
 [3] respective attorneys, that all
 [4] objections, except as to the form of the
 [5] questions, shall be reserved until the
 [6] time of trial; that the filing of the
 [7] deposition be waived; and, that the
 [8] witness may read and sign the deposition
 [9] without any Notary Public being present.
 [10]

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[1] THE WITNESS: Okay.
 [2] MS. MCDONALD: If you don't understand a question, [3] let
 me know and I'll be happy to rephrase it. If you need [4] to take a
 break, let me know that.
 [5] THE WITNESS: Okay.
 [6] MS. MCDONALD: We can accommodate that.
 [7] EXAMINATION BY MS. MCDONALD:
 [8] Q Please state your name and position here at FMC
 [9] Devens?
 [10] A David L. Winn, Warden.
 [11] Q And have you reviewed any documents to prepare for
 [12] your testimony today?
 [13] A Yes I have.
 [14] Q What documents did you review?
 [15] A The information that the attorneys have. The
 [16] documents that the attorneys have which, I don't know, all
 [17] the documents that you requested, they requested. That's
 [18] what I reviewed.
 [19] Q That's a lot of documents.
 [20] A Yeah.
 [21] Q Okay. Did you review your Answers to
 [22] Interrogatories?
 [23] A Yes I did.
 [24] Q Okay. And did you review the Complaint? The
 [25] Plaintiff's Complaint in this matter?

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PROCEEDINGS

[2] (10:04 a.m.)

[3] MS. MCDONALD: Good morning, Warden. My name is
 [4] Dawn McDonald and I am the attorney for Colleen O'Donnell
 [5] for the matter now pending in Federal Court with regard to
 [6] discrimination claims and retaliation claims.

[7] I am going to ask you a number of questions today [8] and I
 just want to go over some ground rules before we [9] begin.
 [10] MR. WILMOT: Have you sworn in the Warden yet?

[11] MS. MCDONALD: Oh, sorry.

[12] DAVID L. WINN, Sworn

[13] MS. MCDONALD: Damian, usual stipulations?

[14] MR. WILMOT: Yes.

[15] MS. MCDONALD: Waive the notary. Okay, first [16] ground
 rule is please respond verbally because the [17] stenographer
 cannot take down a shake or a nod of the head [18] or a gesture.

[19] THE WITNESS: Okay.

[20] MS. MCDONALD: Please allow me to finish my
 [21] question before you answer even if you think you know what
 [22] the answer is going to be or if it is apparent what I am
 [23] asking.

[24] It just makes it clearer on the record and easier [25] for the
 stenographer to take down your testimony.

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[1] A Yes I did.
 [2] Q Okay. Are you currently on any medications [3] that
 would impair your memory or ability to testify today?
 [4] A No.
 [5] Q How long have you been employed by the Federal
 [6] Bureau of Prisons?
 [7] A Approximately thirty-two years.
 [8] Q And starting from the beginning of your [9] employment,
 can you tell me the course of your employment [10] throughout
 your thirty-two years?
 [11] A If I can remember. Let's see in 1973, I joined [12] the
 Bureau of Prisons as a correctional officer at [13] Englewood,
 Colorado. Approximately 1977, I was promoted to [14] counselor.
 [15] Q And what type of job is a counselor?
 [16] A A counselor, you have a case load of approximately
 [17] 120 inmates that you are seeing, giving guidance and help.
 [18] Q Okay.
 [19] A Then in 1984, I was transferred to Philadelphia, [20] PA
 as a community corrections trainee.
 [21] Q And what does that mean?
 [22] A You have oversight; you are in training to be a
 [23] community corrections managers for halfway houses.
 [24] Q Okay.
 [25] A For the Northeast region.

[1] Q Okay.
 [2] A Four months later, I was promoted to actually.
 [3] community corrections manager here in Boston. That was in
 [4] 1987. Excuse me, 1985. In 1987, I was promoted to
 [5] community corrections administrator for the Northeast from
 [6] 1987 to 1990.
 [7] From 1990 to 1997, I was Associate Warden at [8] Otisville,
 New York.
 [9] Q A Social Warden?
 [10] A Associate.
 [11] Q Oh, associate.
 [12] A Warden. From 1997 to 1999, I was Associate Warden
 [13] at Chicago, MCC Chicago, Illinois. Approximately that time.
 [14] Q Okay.
 [15] A In that same year, I was promoted Warden at FCIP [16] in
 Illinois. Give or take a month in between there. And [17] December
 2000, I was promoted or lateralized to Warden here [18] at Devens.
 [19] Q What was the year that you came here again?
 [20] A 2000. December 1, 2000.
 [21] Q And can you tell me about your education?
 [22] A I don't have a degree. I have two years of [23] college.
 [24] Q Okay. And where did you go to college?
 [25] A Rockland Community College.

[1] A Yes they do.
 [2] Q Okay. Can you explain the disciplinary issue that [3] you
 follow here at Devens?
 [4] A If a staff member were to make an allegation or an
 [5] inmate would make an allegation, I'm obligated to ensure
 [6] that allegation is processed properly in accordance with
 [7] Bureau policy.
 [8] Q And when you say process properly, what do you
 [9] mean by that?
 [10] A Well, for example, if a staff member were to make [11] an
 allegation against another staff member, I have to report [12] that
 to the Central Office for review.
 [13] If it's a Category Two or a Category Three, excuse [14] me,
 Category One or Category Two case. If it's a
 [15] Q Let me interrupt you. What is a Category One and [16] a
 Category Two?
 [17] A Category One and Category Two case is a pretty
 [18] serious case. It could be a civil rights violation against [19] an
 inmate or it could be a staff member that is convicted of [20] a
 felony or it could be a staff bringing in contraband.
 [21] Those cases are handled at the Central Office [22] level.
 Category Three is a minor violation in the Bureau's [23] eyes in my
 opinion. It would be a DUI, an AWOL, something [24] minor to that
 effect.
 [25] Q And those are handled within the institution?

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[1] Q And where is that?
 [2] A Littleton, Colorado.
 [3] Q Can you tell me briefly, I know you have a lot of
 [4] responsibilities but can you tell me, kind of generally, [5] what
 your responsibilities as the Warden are?
 [6] A I'm responsible for the care, custody and [7] treatment of
 approximately 1250 inmates. With approximately [8] an oversight
 of approximately 450 staff with a budget of [9] approximately 50
 million dollars.
 [10] Q And can you be a little bit more specific with [11] regard
 to your duties of oversight of the staff.
 [12] A Well, I'm responsible to make sure that they come [13] to
 work, they leave on time, they actually do their job.
 [14] I oversee performance issues, discipline issues, [15] and I
 insure that the staff members don't violate the [16] inmates' rights.
 That's probably one of my biggest [17] responsibilities.
 [18] Q Okay.
 [19] A And if they do, I intervene.
 [20] Q Okay. So are you pretty much apprised of any
 [21] current issues that are going on in the institution at any
 [22] given time?
 [23] Do your, let me explain a little more. Do your [24] supervisors
 report to you regularly on any staff issues, [25] performance issues
 or disciplinary issues as they rise?

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[1] A Locally. But I still have to make a report on [2] those
 Category Threes every month.
 [3] Q Okay. And I interrupted you. I don't remember [4] where
 you were but you were telling me you have to report [5] Category
 Ones and Category Twos to central office.
 [6] A Correct.
 [7] Q And then I interrupted you.
 [8] A Well, I report that. They make a determination if [9] it is a
 Category One or if it is a Category Two and if it [10] goes to
 Central Office, they make the determination and they [11] do the
 investigation.
 [12] If they return it to me, refer it back to me as a [13] Category
 Three, then it's my job to do the investigation.
 [14] Q And do you have any discretion in determining, in
 [15] making that determination?
 [16] A Only on Category Three cases.
 [17] Q Okay. Is that the same disciplinary procedure [18] that
 followed in other federal prisons?
 [18] A Yes.
 [19] Q Within the Bureau prisons, that's the policy?
 [20] A Yes.
 [21] Q Not any deviations from that policy?
 [22] A Not that I'm aware of, no.
 [23] Q Okay. Now on a Category Three issue, once the
 [24] determination is made that it's a Category Three, what is

[1] the next step that you take?

[2] A The next step I'm going to take is that I'm going [3] to call my special investigative agent up to my office, he [4] is already aware of it anyway because he's the one who's [5] going to report to the Central Office whether we do a [6] referral process.

[7] So he is pretty much aware of the Category Three. [8] And I'm going to tell him to proceed to investigate that [9] Category Three in hopefully, sixty days.

[10] Q And is there only one of these officers that does [11] the investigation?

[12] A There is only one officer that does staff cases [13] and there is another lieutenant that will do inmate cases, [14] if an inmate makes an allegation against another inmate.

[15] Q And who is the officer that does the staff [16] investigations?

[17] A That would be Darren Brown.

[18] Q And who is -

[19] A As of today.

[20] Q As of today?

[21] A Yeah.

[22] Q And prior to today, who did those investigations?

[23] A Well, prior to today, it's always been Darren [24] Brown for approximately, the last two years.

[25] Q Okay. How come you said as of today?

[1] Q And -

[2] A But it still could have been a Category One or [3] Two, however, they would allow me, they made the decision to [4] allow me to do the investigation.

[5] Q Okay. And did you object to that decision?

[6] A Yes I did.

[7] Q And what were the reasons you objected?

[8] A Because I thought it would be a conflict of [9] interest.

[10] Q And why did you think that?

[11] A Because Mr. Reynoso worked in the SIS shop in the

[12] department and I objected, I didn't object, I requested that [13] they do the investigation based upon the fact, that he was [14] part of the investigative process.

[15] He worked there, he did investigate. But he [16] worked in the shop.

[17] Q So SIS is the department that handles

[18] investigations?

[19] A Correct.

[20] Q And what does SIS stand for?

[21] A Well, it's special investigative supervisor.

[22] Q Okay. So did David Reynoso work under Darren

[23] Brown?

[24] A Yes he did.

[25] Q So Darren Brown was his supervisor?

[1] A As of today. As of today, he -

[2] Q Okay.

[3] A Doing the investigations.

[4] Q Okay. And who does the inmate investigations?

[5] A That's Al Colon.

[6] Q Now you're familiar with the incident that [7] occurred between Officer David Reynoso and Colleen O'Donnell [8] on April 8, 2002?

[9] A Yes I am.

[10] Q And we're going to skip around a little bit but [11] since we're on the subject, Darren Brown did not do that

[12] investigation, did he?

[13] A No he did not.

[14] Q And was that a Category Three incident?

[15] MR. WILMOT: Objection. You can answer. You can

[16] answer.

[17] THE WITNESS: Okay. It was referred that same day [18] and I think they categorized that as a Category One, [19] Category Two. I'm not quite sure. However, they did refer [20] that back to me back in May of that year, if I remember [21] correctly.

[22] BY MS. MCDONALD:

[23] Q And when you say they, you mean the Central

[24] Office?

[25] A Right.

[1] A That's correct.

[2] Q So you asked them, the Central Office, to conduct [3] the investigation?

[4] A Yes I did.

[5] Q And did they agree?

[6] A Yes they did.

[7] Q And who conducted the investigation?

[8] A Brian Ross.

[9] Q Okay, I'm going to leave that subject for the [10] moment. And I want to go back to talking about the [11] disciplinary process.

[12] A Okay.

[13] Q Once you assign somebody to investigate for a [14] staff incident, for example, Darren Brown, assuming he is

[15] investigating a staff incident?

[16] A Okay.

[17] Q What are the procedures he follows in conducting [18] his investigation?

[19] A You would have to ask him.

[20] Q You don't know what the procedures are?

[21] A No.

[22] Q There are not standard procedures that they [23] follow?

[24] A It all depends, well, I'm not the investigator. I [25] may have a different procedure than on how he investigates,

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[1] so you would have to call him in.
 [2] Q So there are no specific procedures as to how an investigation should be conducted?
 [3] A No, not that I'm aware of.
 [4] Q Okay. So once he finishes his investigation, does [6] he make recommendations or drafts a report?
 [5] A He drafts a report.
 [6] Q And who does his report go to?
 [7] A It goes to me.
 [8] Q I've seen in some of the documentation here and some of the investigations that Captain Bollinger -
 [9] A Correct.
 [10] Q Makes recommendations to you?
 [11] A He may have. Most likely, he would not. He would sign off on it. Signed off by certain people. For example, the Captain does sign off on those investigations and so does the Associate Warden Programs. So I know they've seen them before I do only to make corrective errors, grammatical errors, corrected before I get the report.
 [12] Q Okay. So Darren Brown's report doesn't always go directly to you?
 [13] A No.
 [14] Q Sometimes it makes a stop in between.
 [15] A It stops at the Captain and Associate Warden Programs.

[1] A Yes it is.
 [2] Q From witnesses or parties involved?
 [3] A Yes.
 [4] Q Do you look at anything else other than the investigative report in determining what discipline you're going to hand out to an employee who may have committed a wrong?
 [5] A Basically I make my decisions based on the [9] affidavits.
 [6] Q Just what the investigator hands you?
 [7] A Correct.
 [8] Q You don't look in personnel files or at any other documentation?
 [9] A No.
 [10] Q Would prior disciplinary information be contained [16] in the report that is given to you by the investigator?
 [11] A No.
 [12] Q So they don't, the investigators don't typically [19] look at past disciplinary actions either?
 [13] A No.
 [14] Q Is the policy, the FBOP, do you understand what I mean when I say FBOP?
 [15] A Yes.
 [16] Q Is their disciplinary policy, what's called the Progressive Disciplinary Policy?

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[1] Q Okay. So then, it is no longer his report at that [2] point? Do they make their grammatical changes and then put [3] their name on it?
 [2] A Actually that report belongs to the Office of [3] Internal Affairs.
 [3] Q Okay.
 [4] A The actual report. Which is Darren Brown. He represents the Office of Internal Affairs. The Central [9] Office.
 [5] Q Okay.
 [6] A So it's actually their report.
 [7] Q Okay. So once you get the report, then what do [13] you do?
 [8] A I review the report and look at the affidavits and make a decision whether there's going to be discipline to follow or if it's not sustained, I go with what the investigator reports to me.
 [9] I don't think in my career, I've ever changed one [19] of those reports.
 [10] Q Okay.
 [11] A Because I want it independent.
 [12] Q And you said you look at affidavits?
 [13] A Correct.
 [14] Q So is it part of the investigative process for [25] them to take affidavits?

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[1] A I don't know if there's a Progressive Disciplinary [2] Policy. You do take progressive discipline to change one's [3] behavior. I do agree with that.
 [2] Q Okay. Let me explain what I mean by Progressive Discipline.
 [3] A Okay.
 [4] Q So we don't get confused. For example, if a [8] person, a staff member commits a Category Three offense and [9] they receive a written warning and the next time, they [10] commit a Category Three offense, perhaps would they get [11] another warning or would it be a more, suspension?
 [5] And the next time, would there be, you know, I [13] guess, increasingly severe levels of discipline it's what I [14] mean by a progressive disciplinary policy.
 [6] A Right.
 [7] Q Do you have that or-?
 [8] A Yeah, I think we have that. I think that if [18] you've got a Category Three, for example, of an AWOL, it all [19] depends on the circumstances of that AWOL.
 [9] And then you get another AWOL, it would depend on [21] the circumstances of that AWOL. What the discipline would [22] be.
 [10] Q And would the prior AWOL be taken into account, if [24] a person had a second AWOL?
 [11] A It would be if it was in the two year reckoning

[1] period.
 [2] Q Okay. What's the two year reckoning period?
 [3] A Well, if somebody would get, if an individual [4] would get disciplined today, and I give, excuse me, if they [5] commit offense today and I give them discipline tomorrow, [6] there's a two year reckoning period that I would have to [7] look at that case and based upon that reckoning period, what [8] my discipline would be.
 [9] It's my decision whether I would do progressive. [10] Give them the same discipline or well, do progressive [11] discipline.
 [12] Q Okay. But you have a great deal of discretion in [13] making that determination?
 [14] A Yes and no. I do have the discretion of making [15] once the proposal is given to me on the discipline; it is [16] reviewed by the regional and central office. It's Central [17] Office or Region that would disagree with the amount of [18] discipline and if they think it's inappropriate, they would [19] advise me that it's inappropriate discipline and usually [20] when they do that, I go along with the recommendation.
 [21] Q Okay.
 [22] A But I'm the final authority when I do give the [23] discipline.
 [24] Q Okay. And so, if it's, is it fair to say if a [25] person hasn't receive more than one discipline in the two

[1] year reckoning period that you do look at prior disciplines [2] in determining what punishment they're going to receive?
 [3] A I don't. No, I don't.
 [4] Q Okay. Well, I'm confused then.
 [5] A There is progressive discipline in the Bureau [6] prisons.
 [7] Q Okay.
 [8] A Do I? I give discipline based upon the present [9] case.
 [10] Q Okay. So if a person had an AWOL today and then [11] next week had another AWOL, and you need to discipline them, [12] would you look at the first one or would you only go on the [13] facts of the second one?
 [14] A I would probably look at the first one as why but [15] I'm going to deal with the discipline on the present one.
 [16] Q Okay. I believe and correct me if I'm wrong, have [17] a number of different files where you keep employee records [18] here, is that correct?
 [19] A Well, the only file I know on employees other than [20] the employee files, would be the performance log that the [21] supervisors keeps on his staff members and a Human Resource [22] file. And if somebody had a discipline issue, then there [23] would be a file down in the SIS shop.
 [24] Q Okay. So there could be potentially three files [25] where employees, where information about employees could be

[1] in this facility, be maintained?
 [2] A That is correct.
 [3] Q And this disciplinary file is separate from a [4] personnel file?
 [5] A Yes.
 [6] Q And when a person applies for a job here, I saw [7] from all the documents that there are a number of things [8] that they need to fill out in order to obtain employment [9] here?
 [10] A Correct.
 [11] Q And where are those documents maintained?
 [12] A Those would be in Human Resource Department.
 [13] Q Okay. And it's standard procedure that the FBOP [14] do background checks on employees who apply to work here?
 [15] A Yes they do.
 [16] Q And where are those maintained?
 [17] A Human Resource Department.
 [18] Q And would those also be in the personnel file? [19] The background checks?
 [20] A Yes. The only reason I'm answering that question [21] is that there might be a file in Texas that I'm unaware of [22] where they keep a personnel file based upon the background [23] checks.
 [24] You know, I don't know that for a fact, I just [25] know what files we have.

[1] Q So do you have the background checks for all of [2] the employees who--?
 [3] A Yes.
 [4] Q Who have applied for work at this facility?
 [5] A Yes.
 [6] Q What procedures does an applicant for employment [7] go through in order, what is the application process?
 [8] Let me put it that way.
 [9] A Well, I'm not an expert at that. Just, they fill [10] out an application, we do an interview. They have to go [11] down to the hospital for a urinalysis test and they have to [12] clear the background.
 [13] Q Okay.
 [14] A That's pretty much, that's pretty much in my mind,
 [15] excuse me, in simple terms, my knowledge of the procedure.
 [16] Q Okay. Do you know if they have to do a physical [17] fitness test as well?
 [18] A Down in Glyncro they do. Once they're employed by [19] the Bureau of Prisons.
 [20] Q And Glyncro was the training facility?
 [21] A Right.
 [22] Q And what state is that in? Georgia?
 [23] A Georgia.
 [24] Q Why do they require a background check for [25] applicants?

[1] MR. WILMOT: Objection. You can answer.
 [2] THE WITNESS: Well, they do a background check to [3] see if number one, if the employee is telling the truth. If [4] there would be any prior convictions. If they meet certain [5] guidelines. Do I know all those guidelines? No I don't. [6] But there are certain guidelines that the employee would [7] have to meet.

[8] BY MS. MCDONALD:

[9] Q And do you know whether these guidelines and [10] possibly one of the reasons for the background check is [11] because these individuals will be working with inmates? [12] Is that part of the reason the background check is [13] conducted?

[14] MR. WILMOT: Objection. You can answer.

[15] THE WITNESS: Well, I think the background check [16] is done to make sure the employee is telling the truth.

[17] BY MS. MCDONALD:

[18] Q Okay.

[19] A On their application.

[20] Q Is there anything on a background check that would [21] be, what I'm going to call a red flag. That the person may [22] still be allowed to become an employee here that would maybe [23] be a note of caution that you would pay attention to in [24] hiring somebody?

[25] A Well, I guess if a person said that they didn't

[1] A Is there a policy in place?
 [2] Q Yes.
 [3] A Yes. Have I waived that for pregnant females or [4] someone with a doctor's note, yes.
 [5] Q And you're able to waive that policy?
 [6] A For a period of time.
 [7] Q What's time period of time?
 [8] A Until they get cleared by their doctor. That [9] would be an example.
 [10] Q Okay. So you only have the ability to waive that [11] policy for medical reasons?
 [12] A I could waive it for other reasons.
 [13] Q Okay. So you have some discretion?
 [14] A I have a little bit of discretion. Correct.
 [15] Q Okay. Is that policy barring the medical issues, [16] a pregnant female or somebody that is perhaps on Workers [17] Comp and he has light duty, is that policy a condition of [18] any correctional officer's employment here?
 [19] A Repeat the question.
 [20] Q Okay. You said that there's a policy that any [21] correctional officer here has to be able to use physical [22] force in order to control inmates?
 [23] A Correct.
 [24] Q You also said that you had the ability to waive [25] that in certain circumstances?

[1] use drugs and we find out they did use drugs, that could be [2] a problem.

[3] Q Would you hire that person?

[4] A No.

[5] Q And if an applicant stated on his application that [6] he had been arrested for some offense but not convicted, [7] would you hire, would you still be able to hire that person?

[8] A Well, I would get advise first by the Human [9] Resource manager. What the guidelines are and do they meet [10] the guidelines and would there be any waivers involved.

[11] Q Okay.

[12] A But I would make the final decision on whether a [13] waiver would be forwarded to the Regional Director.

[14] Q And when you say a waiver, what do you mean by [15] that?

[16] A If it was a minor offense, told the truth, but it [17] was a minor offense but, then I would probably request a [18] waiver.

[19] Q From whom?

[20] A From the Regional Director.

[21] Q I see. Is there a policy at the FBOP and [22] specifically, at Devens, that all employees have to have the [23] ability to use physical force, possibly including deadly [24] force if there were, in order to maintain control over the [25] inmates?

[1] A For short periods of time, that's correct.
 [2] Q Okay. Barring any waivers, is that policy a [3] condition of any correctional officer's employment?
 [4] A Yes.
 [5] Q And does the policy require that the employee have [6] the ability to use a firearm?
 [7] A Yes it does.
 [8] Q Okay. Can you explain the Administrative Leave [9] Policy to me?
 [10] A The Administrative Leave Policy?
 [11] Q Yeah.
 [12] A I can grant administrative leave. I'm the only [13] person in the institution that allows administrative leave [14] to be granted by me. Administrative leave would be given to [15] an employee since I'm the granting authority, I would [16] determine how, I can only give so much administrative leave [17] in a period of time.
 [18] It would be on the individual's request to me what [19] the reasons would be for administrative leave.
 [20] Q What is the, I guess, largest amount of [21] administrative leave that you're allowed to grant?
 [22] A Up to ten days.
 [23] Q Okay. And you have a certain amount of discretion [24] in determining whether the reason for administrative leave [25] is valid or invalid and what you may grant administrative

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[1] leave for?

[2] A Repeat the question.

[3] Q Can you grant administrative leave for any reason?

[4] A For any reason? I could. Pretty much.

[5] Q But clearly, you would have to believe that it was [6] a valid reason but-?

[7] A Yeah.

[8] Q As long as you considered it a valid reason, you [9] could grant it for any reason at all?

[10] A Yes.

[11] Q Are there any responsibilities placed on an [12] individual who is out on administrative leave?

[13] A Only if I put stipulations. Since I'm the [14] granting authority, there could be stipulations in granting [15] that administrative leave?

[16] Q And what would be a reason that you would put [17] stipulations on it?

[18] A A good example would be if an employee had a [19] medical problem and if the employee used all of their sick [20] leave and annual leave, and including abusing the annual [21] leave or sick leave, then I would take a look at that and I [22] would put in writing or I may do it verbally, I would grant [23] the administrative leave and I would put some stipulations [24] in that.

[25] Q What kind of stipulations?

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[1] A That you could stay, you know, I'm going to grant [2] you administrative leave, but you need to call in to your [3] supervisor occasionally to ensure that one, that you know [4] when the administrative leave expires.

[5] It could be given some type of direction to the [6] employee.

[7] Q Okay. Would they have to call on a daily basis [8] or-?

[9] A If I put that in the stipulation.

[10] Q And you've done that?

[11] A Yes I have.

[12] Q Put the stipulations on people before?

[13] A I've put that on a person before?

[14] Q Which person?

[15] A Ms. O'Donnell.

[16] Q She's the only person you've put that stipulation [17] on?

[18] A That's correct.

[19] Q When did you first meet Ms. O'Donnell?

[20] A I guess the year I walked in here. The year 2000.

[21] Q She was already working here at that time?

[22] A Well, I'm not certain of the exact date. 2000, [23] 2001.

[24] Q Okay. And do you know what her job position was [25] at the time?

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[1] Q Had she ever been disciplined for any reason?

[2] A Not that I recall.

[3] Q To the best of your knowledge, is the discipline [4] that she received for being AWOL, the only discipline she [5] has ever received?

[6] A Yes.

[7] Q And that discipline was a written warning placed [8] in her personnel file, is that correct?

[9] A Yes.

[10] Q And the original recommendation was that Colleen, [11] Ms. O'Donnell, be suspended for thirty days, is that [12] correct?

[13] A I don't remember the original.

[14] Q Do you recall whether it was more than a written [15] warning? The recommended discipline?

[16] A There was more discipline proposed. However, [17] based upon her situation, her medical situation, I reduced [18] it.

[19] Q Okay. Were you aware that Ms. O'Donnell and David [20] Reynoso were dating in 2002?

[21] A No.

[22] Q When did you become aware that they had a dating [23] relationship?

[24] A April 8, 2002.

[25] Q And have you ever seen the background check

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[1] conducted on David Reynoso?
 [2] A Yes I have.
 [3] Q And do you recall what his background check
 [4] revealed?
 [5] A I think there was an issue of just debts.
 [6] Q Anything else?
 [7] A Not that I recall.
 [8] Q Did it reveal an arrest for assault and battery [9] with a
 dangerous weapon?
 [10] A Not that I recall.
 [11] Q Have you ever seen David Reynoso's application for
 [12] employment?
 [13] A At one time, I reviewed it. The date of review, I
 [14] couldn't tell you.
 [15] (Exhibit No. 1 marked for [16] identification.)
 [17] BY MS. MCDONALD:
 [18] Q Okay. I am going to show you this document? Do
 [19] you recognize this document?
 [20] A Do I recognize it?
 [21] Q Yes.
 [22] A No I don't.
 [23] Q You've never seen that document before?
 [24] A I may have but I don't remember it.
 [25] Q Do you know what this document is?

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[1] A They do a five year background check.
 [2] Q And that's standard for all employees?
 [3] A That's correct.
 [4] Q So it's possible that was the five year background
 [5] check that you don't recall?
 [6] A That's possible.
 [7] (Exhibit No. 3 marked for [8] identification.)
 [9] BY MS. MCDONALD:
 [10] Q Okay. I am going to show you another document and
 [11] ask if you can take a look at that and state for the record
 [12] what that document is?
 [13] A I have no idea.
 [14] Q You don't know what this document is?
 [15] A No.
 [16] Q Now you testified a few moments ago that you had
 [17] reviewed Mr. Reynoso's application for employment at some
 [18] point in time, I believe, was your testimony.
 [19] Is this not his application for employment?
 [20] MR. WILMOT: Objection. You can answer.
 [21] THE WITNESS: Well, I reviewed his, you're asking [22] me
 if I know what that form is and the answer is no, I don't [23] know
 what that form is.
 [24] Is it part of the background, it could be, but I'm [25] not
 certain.

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[1] A It's a document from my understanding, I'm not an
 [2] expert at it, would give me information either that the
 [3] investigation has been cleared or not cleared.
 [4] Q Okay. And do you see the date on the bottom. [5] Would
 that represent when you received that document.
 [6] MR. WILMOT: Objection.
 [7] THE WITNESS: I wasn't here at that time.
 [8] (Exhibit No. 2 marked for [9] identification.)
 [10] BY MS. MCDONALD:
 [11] Q Okay. I am going to show you another document.
 [12] Can you describe that document?
 [13] A It's a reinvestigation and it closed out the
 [14] investigation on 7-30-04.
 [15] Q And what is the date on that document?
 [16] A March 31, 2005.
 [17] Q Do you know what investigation -?
 [18] A Excuse me, I can't tell if it's March 3rd or March [19] 31st.
 [20] Q Okay. Do you know what investigation that
 [21] document is referring to?
 [22] A No.
 [23] Q What would be a reason that another, an additional
 [24] background check would be conducted on an employee once
 he's [25] already hired?

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[1] BY MS. MCDONALD:
 [2] Q Okay. You've never seen this form before?
 [3] A Not that I recall.
 [4] Q I am going to refer you to paragraph 8. If you [5] could
 read what paragraph states for the record.
 [6] A Paragraph 8?
 [7] Q Yes.
 [8] A "During the last ten years have you ever been
 [9] convicted, imprisoned, been on probation or been on parole?
 [10] Includes felonies, firearms, explosive violations,
 [11] misdemeanors and all other offenses. If you answered yes to
 [12] Item 15, you need to provide the date, explanation of the
 [13] violation and place of occurrence, and names and addresses
 [14] of the police department or court involved."
 [15] MR. WILMOT: For the record, I just want to state [16] the
 right side of this document is support copy, I guess. [17] So, it's
 hard to read anything in the right margin of the [18] document.
 [19] MS. MCDONALD: Yeah. And I won't ask him anything
 [20] about the right margin.
 [21] MR. WILMOT: All right.
 [22] MS. MCDONALD: That's how the copy was that I got.
 [23] BY MS. MCDONALD:
 [24] Q So this is, paragraph 8 states that any yes [25] answers
 should be explained in Item 15. So I am going to

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[1] refer you to Item 15 on the second page and first let me ask
 [2] you, does that document if I represent to you that document
 [3] is the declaration for federal employment for David Reynoso,
 [4] would you agree with that?

[5] A Repeat the question.

[6] Q If I represent to you that document is the [7] declaration
 for federal employment filled out by Mr. David [8] Reynoso, would
 you agree with that statement?

[9] A Yes.

[10] Q And under Item 15, does he explain a situation
 which was asked about in paragraph 8?

[12] MR. WILMOT: Objection. You can answer.

[13] THE WITNESS: YES.

[14] BY MS. MCDONALD:

[15] Q And what does it state there?

[16] A Arrested for assault and battery on May 3, 1991.

[17] Case was brought before a judge on October of 1991. He
 [18] continued the case without a finding for one year. I was
 [19] ordered to report to probation, probation officer, where she
 [20] instructed me to report to her once a month. I was also
 [21] instructed to attend emergency, or I think it's emergency
 [22] classes, merge classes. When I went before the judge, he
 [23] later dropped all charges from the case and was dismissed.
 [24] The court was Lynn District Court, Essex County.

[25] Q Were you ever aware of these facts as are stated

[1] Q Regional Director. Is this possibly a [2] circumstance that
 you would have requested a waiver?

[3] MR. WILMOT: Objection. You can answer.

[4] THE WITNESS: I don't know. I've never had that [5] brought
 before me as a warden on something like that.

[6] BY MS. MCDONALD:

[7] Q Okay. In your many number of years as a warden [8] and
 thirty-two years working for the Bureau of Prisons, can [9] you
 state whether this is something that you may call for a [10] waiver
 on?

[11] A If it wasn't, if it was a continuation of finding, [12] and
 there wasn't, he wasn't, that person wasn't found guilty [13] or
 innocent, to be honest with you, I don't know if I would [14] or I
 wouldn't.

[15] Q Okay.

[16] A I may have. I mean, I may -

[17] Q You would have to look into the facts and

[18] circumstances?

[19] A Pretty much, yes.

[20] Q Okay. When did you first become aware of the [21] April
 8, 2002 incident?

[22] A On that particular day, I was sitting in my [23] office.
 Approximately 11 a.m. or 11, between 11 a.m. and [24] 11:30, I
 received a call from Steve Gagnon indicated that [25] there had
 been an incident involving two staff members down

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[1] in this document?

[2] A Was I aware of those?

[3] Q Yes.

[4] A Not that I recall. No.

[5] Q Okay. Now I understand that in May of 1998, you [6] were
 not the Warden at this facility? Is that correct?

[7] A Correct.

[8] Q But let me ask you a hypothetical question. Were [9] an
 individual to apply for employment, and state these facts [10] as
 they are stated in this document, is this an individual [11] that you
 would hire for employment at this facility?

[12] A Well, number one, I don't know the rules or
 [13] guidelines on a continuation without a finding. From my
 [14] understanding continuation without a finding doesn't mean
 [15] that he was found guilty or innocent.

[16] That's a hypothetical question. I don't know what [17] the
 guidelines are, I would have to refer -

[18] Q So you would make a phone call on something like
 [19] this?

[20] A I would refer back to my Human Resource manager
 [21] for advice.

[22] Q Okay. And you testified earlier that there may be
 [23] circumstances where you would request a waiver from I
 [24] believe you said, the Central Office.

[25] A Region Director.

[1] at Mirror Lake and that Ms. O'Donnell was coming to my
 [2] office.

[3] Q And when she got to your office what did she say [4] to
 you?

[5] A As she was coming up to my office, I called [6] Ms. Lord,
 Human Resource Manager, to come in and when [7] Ms. O'Donnell
 got there she advised me of an alleged assault [8] that involved
 another staff person. And I asked who that [9] staff person was,
 and she mentioned Mr. Reynoso.

[10] She said she didn't know what to do. I asked her [11] if she
 needed medical attention and she stated no, I don't [12] need
 medical attention. I asked her what occurred and she [13] advised
 me that her and Mr. Reynoso got in an argument and [14] that
 Mr. Reynoso allegedly assaulted her.

[15] She also mentioned and I'm sure I asked a couple

[16] questions but I don't recall what I asked, I asked her, well
 [17] she advised me that there was a policeman in their proximity
 [18] and I, I would also bet my money, that I asked her if she
 [19] went to that police officer for assistance and she didn't
 [20] request assistance from that police officer.

[21] I know I asked her on a couple of occasions, are [22] you set
 you don't want to go down to the medical to get [23] assessed of
 any injuries and she said no.

[24] And then I advised her, she asked me what to do. [25] I said,
 well, you need to file a police report. You need to

[1] go down to the State Police and file a police report because [2] the subject came up whether it was on duty, whether it was [3] on government property or not. I don't know if I brought it [4] up, I can't remember if Ms.O'Donnell brought it up. But it [5] came up that it was off government property and it was [6] during both individual's lunch break.
 [7] So at that time, I said, I think I gave her admin [8] leave for the day. I had a staff member, I asked her if she [9] wanted a staff member to go with her to report it and I [10] don't know if she said yes or no, I can't remember that on [11] that day.
 [12] Later on, I found that a staff member did go with [13] her. She did report it.
 [14] I notified my Regional Director of the incident [15] because it dealt with an alleged assault. Staff on staff. [16] I gave him the information that was provided to me by [17] Ms.O'Donnell.
 [18] I did request that both staff persons be placed on [19] home duty status.
 [20] Q Okay. Go ahead.
 [21] A The Regional Director at that time stated no, this [22] would not qualify for home duty status case.
 [23] Q Can you, let me interrupt you. Can you explain [24] what home duty status is?
 [25] A Home duty status would be that they would be

[1] (Pause)
 [2] MS. MCDONALD: Let me show you this document. [3] Take a look at that.
 [4] (Exhibit No. 4 marked for [5] identification.)
 [6] THE WITNESS: Okay.
 [7] BY MS. MCDONALD:
 [8] Q Do you recognize that document?
 [9] A Yes I do.
 [10] Q And what is it?
 [11] A It's the Workplace Violence Committee Meeting
 [12] Report to me.
 [13] Q And I think you mentioned they met a couple of
 [14] times. Do you know whether this is the first report or the
 [15] second report?
 [16] MR. WILMOT: Objection. You can answer.
 [17] THE WITNESS: I'm not sure if it was the first or [18] second time they met. They met in the afternoon and the [19] morning.
 [20] BY MS. MCDONALD:
 [21] Okay. And down towards the bottom of the page, [22] the Committee Recommendations.
 [23] A Yes.
 [24] Q It states that the committee decided to reconvene [25] on Tuesday, April 9th, at 9 a.m. to further consider the

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[1] placed at home during their scheduled shift with pay or [2] without pay and that would be their duty station.
 [3] Q So that's different than admin leave?
 [4] A Yes.
 [5] Q Okay. Go ahead, you can continue.
 [6] A Okay. After I notified my Regional Director, then [7] I conducted a work place violence committee-
 [8] Q You conducted it or you asked somebody to-?
 [9] A Well, I didn't conduct it. I gathered a committee [10] up [11] Q Okay.
 [12] A By policy in accordance with Bureau policy to [13] advise me whether workplace violence existed or not. I [14] gathered the staff that was outlined by policy and I may [15] have added a staff member or two to that policy.
 [16] I presented the chairperson, who was David Porter [17] and the people in the committee, the committee members, what [18] I was told by Ms.O'Donnell and that's all I did and I told [19] them to report back to me when they come up for some [20] recommendations or their review.
 [21] I mean, that day and then I guess they met the [22] next morning. They reviewed the information they had that [23] was provided by me, by Ms.O'Donnell and they provided me a [24] report.
 [25] Q Okay. Did you, actually let me find that report.

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[1] incident based on how the Mass State Police responded.
 [2] Do you see where it says that?
 [3] A Yes.
 [4] Q Is that the second meeting to which you were [5] referring to?
 [6] A This document, I don't know if they wrote them up [7] the same day, this must be the first time they met at.
 [8] Q Would it be safe to say that based on that [9] committee recommendations in this document, that at this [10] point in time, Mr.Reynoso had not yet been arrested?
 [11] MR. WILMOT: Objection. You can answer.
 [12] THE WITNESS: I don't know if he had been arrested [13] or not at that time.
 [14] (Exhibit No. 5 marked for [15] identification.)
 [16] BY MS. MCDONALD:
 [17] Q Okay. Let me show you this one.
 [18] A Okay.
 [19] Q Do you recognize that document?
 [20] A Yes I do.
 [21] Q And what is that document?
 [22] A Again, it is a Workplace Violence Committee [23] Meeting Minutes to me.
 [24] Q And what is the date?
 [25] A April 8th.

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[1] Q 2002?
 [2] A Correct.
 [3] Q And that's the same date as the previous report.
 [4] Exhibit 4 is it? Yeah.
 [5] Both those documents are dated the same?
 [6] A Correct.
 [7] Q They are a little bit different though. Let me [8] call your attention to the second paragraph of Exhibit 5. [9] Where it says the committee reconvenes.
 [10] MR. WILMOT: You mean Exhibit 4?
 [11] MS. MCDONALD: I think it's 5.
 [12] MR. WILMOT: We have it as 4.
 [13] MS. MCDONALD: Right here. Oh, Okay. Sorry.
 [14] MR. WILMOT: That's all right.
 [15] THE WITNESS: I'm sorry. What was the question?
 [16] BY MS. MCDONALD:
 [17] Q The second paragraph states that the committee reconvened on Tuesday, April 2nd [sic] and they were informed that Mr. Reynoso was arrested on April 8th.
 [20] Do you see that?
 [21] A Yes.
 [22] Q And down on committee findings, it states that the committee does not believe this met the definition of workplace violence.
 [25] Do you see that?

[1] same thing as home duty status. I could not put him at home. That's my definition of both of them. They're the same.
 [4] Q After the Workplace Violence, did they have any [5] further functions? The Workplace Violence Committee. Did [6] they do, have any other responsibilities, once they gave you [7] that report?
 [8] A No.
 [9] Q They just gave you the recommendations and that's the end of their job duties, I will call it?
 [11] A Correct.
 [12] Q Okay. And what else did you with regard to this incident?
 [14] Did you order an investigation?
 [15] A Yes I did.
 [16] Q And why don't you explain to me the process you took?
 [18] A Either that day or the next day, I reported the incident to Central Office to open up an investigation of an alleged assault on staff.
 [21] I think it was the next day that I also late in [22] the afternoon, got a restraining order which was included as [23] part of the investigation.
 [24] Q Who did you get the restraining order from?
 [25] A I don't recall.

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[1] A Yes.
 [2] Q Do you know why they came to that conclusion?
 [3] A No.
 [4] Q And under committee recommendations, can you read [5] paragraph one?
 [6] A Which document?
 [7] Q Exhibit 4.
 [8] A Can I read it?
 [9] Q Yes. For the record.
 [10] A Committee was advised that since the charge [11] against Mr. Reynoso is a state felony, he would have to be [12] placed on indefinite suspension until the charges are [13] resolved.
 [14] Q Did you accept that recommendation?
 [15] A No.
 [16] Q Why?
 [17] A Because prior to this, I had already talked to the [18] Regional Director and advised him of the incident and he [19] advised me that he, Mr. Reynoso could not be placed on [20] home duty status.
 [21] Q Okay. But that doesn't say home duty status, does [22] it?
 [23] A No it doesn't.
 [24] Q It says indefinite suspension.
 [25] A Indefinite suspension in my opinion, means the

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[1] Q Okay. And who was conducting the investigation?
 [2] A At that time?
 [3] Q Yes.
 [4] A There was no investigation being conducted.
 [5] Q Oh, okay.
 [6] A It was referred for investigation.
 [7] Q Okay.
 [8] A To Central Office, Office of Internal Affairs.
 [9] Q So nobody approached Mr. Reynoso and asked him for [10] his side of the story at this point in time?
 [11] A No.
 [12] Q And that's standard procedure?
 [13] A It's standard procedures, I follow that procedure [14] until an investigator would discuss the case and take [15] affidavits and an investigation would actually be initiated.
 [16] Q So do you recall when the investigation was [17] actually initiated?
 [18] A That, to the best of my recollection, it would be [19] after the disposition of the court case was finalized in [20] January of 2003.
 [21] Q So until that happened, until the beginning of the [22] investigation which I understand you don't recall, but it [23] could have been months before that investigation was begun?
 [24] A That's correct.
 [25] Q Okay. And so between April 8 of 2002 and the

[1] beginning of the investigation, you don't really have to,
 [2] you're not obligated or required to do anything about
 [3] Ms.O'Donnell's allegations?

[4] MR. WILMOT: Objection. You can answer.

[5] THE WITNESS: I did several things to her [6] allegations. I held a Workplace Violence Committee. I [7] referred it by policy in a bureaucratic policy to the Office [8] of Internal Affairs.

[9] Once I referred that case to the Office of [10] Internal Affairs, it's not in my hands, to do an [11] investigation. It's in the Office of Internal Affairs to do [12] the investigation.

[13] BY MS. MCDONALD:

[14] Q Did you, correct me if I'm wrong? Did you testify [15] earlier that Darren Brown was in the Office of Internal [16] Affairs?

[17] A He's, he's in the Office, he's a special [18] investigation, special investigation agent. He's not in the [19] Office of Internal Affairs. Office of Internal Affairs is a [20] central office.

[21] Q Okay. Okay. When you received the restraining [22] order, what did you do about that?

[23] A That, once I received the restraining order [24] obviously I had to act on the restraining order which [25] indicated to me that Mr. Reynoso could continue working.

[1] However, there would have to be fifty yard difference [2] between Ms.O'Donnell and Mr.Reynoso.
 [3] So at that time, I think Mr.Reynoso was on leave [4] and Ms.O'Donnell, if I remember correctly, gave her admin [5] leave for a period of time.

[6] Then I decided to ensure staff safety not only for [7] Ms.O'Donnell and for Mr.Reynoso, and still make it as [8] minimum disruptive to both employees. I changed schedules [9] when they returned to work.

[10] Q And you said Mr.Reynoso was on leave also?
 [11] A He could have been on days off or leave, I'm not [12] certain?

[13] Q You don't recall whether you granted him [14] administrative leave?

[15] A I may have granted both of them administrative [16] leave.

[17] Q How did you change their schedules?

[18] A Well based upon the restraining order, my concern [19] was to make sure both employees, to the best of my ability, [20] to make both employees separate working areas to ensure that [21] they did not run into each other and that I could abide by [22] the restraining order.

[23] Again, at that time, prior to that, the Union had [24] come to me and requested to me that if any employee would [25] get some kind of disciplinary action while on Workman's

[1] Comp, that I would try to maintain their schedules as best I

[2] could.

[3] Okay, keeping that in mind, the best I could do, [4] they're

both bargaining unit employees, or excuse me one is,

[5] Ms.O'Donnell, Mr.Reynoso is not a bargaining unit

[6] employee, the best I could do was to change a half hour of [7] her schedule.

[8] And I changed MR. Reynoso's shift from day shift [9] to night shift and I stipulated in my letter that they would [10] have to once their shift ended, they could, they would have [11] to leave within the thirty minutes period of time so they [12] wouldn't run into one another.

[13] Q And did you make these changes right away after

[14] the incident or was there some lapse in period of time?

[15] A There may have been three or four or five days. [16] It all depends on-

[17] Q Okay. But just a few days?

[18] A I would say yes.

[19] MS. MCDONALD: Okay. Unfortunately, I've got all [20] my exhibits out of order.

[21] (Exhibit No. 8 marked for [22] identification.)

[23] BY MS. MCDONALD:

[24] Q But let me show you Exhibit 8. Do you recognize [25] that document?

[1] A Yes, yes, I do.

[2] Q And what is that document?

[3] A It's a restraining order issued by Malden District [4] Court.

[5] Q And was that the order obtained by Ms.O'Donnell [6] for protection from David Reynoso?

[7] A That I don't know. I don't know. My, I don't [8] know if she got it or she gave it to me. I don't know.

[9] Q But this document is concerning Ms.O'Donnell and [10] David Reynoso?

[11] A Correct.

[12] Q Correct?

[13] A Correct.

[14] Q And you already mentioned that they had to stay, I

[15] believe it was fifty yards from each other or Mr.Reynoso

[16] had to stay fifty yards away from Ms.O'Donnell, correct?

[17] A That is correct.

[18] Q And were there any other restrictions placed on

[19] Mr.Reynoso?

[20] A There was a restriction that he couldn't carry a

[21] firearm.

[22] Q And what is the date on that document? I believe [23] it's on the second page.

[24] A Date of order was April 9, 2002.

[25] Q And was there a date that the order expires?

[1] A Expiration date of order was April 23, 2002. If [2] I'm reading it correctly.

[3] Q Does it state on there that the order was extended [4] at any point?

[5] A Next hearing date was April 23, 2002. Date of, [6] yeah, there was an expiration date. They extended it, April [7] 23, 2003. With a hearing date of April 23, 2003. If I'm [8] reading this correctly, okay.

[9] Q And without looking at that document, do you [10] recall whether the order was extended beyond April 23, 2003?

[11] A I extended their separation until, I can't [12] remember if the date was April 23, April 27, I extended it [13] until the probation period ended for Mr. Reynoso.

[14] Q The probation period set by the Court?

[15] A Right.

[16] Q Okay.

[17] A Because I think that restraining order was still [18] in effect. In fact, there were many restraining orders that [19] I received. But I can't recall every one of them.

[20] Q I understand. You can't recall the dates, but [21] you-

[22] A That's pretty much

[23] Q You recollect the order was extended a couple of

[24] times?

[25] A Correct.

[1] Investigative Report Executive Staff Summary that outlines [2] the case and provides information regarding the case.

[3] Q And is this the document that you received?

[4] A Yes I did.

[5] Q And did you review this document in determining [6] what discipline may be appropriate for Officer Reynoso?

[7] A Yes.

[8] Q And were the allegations of off duty misconduct [9] sustained?

[10] A Yes they were.

[11] Q I have a question. What is, for the record, what [12] is the date on this report?

[13] A The dated report is March 26, 2003. That doesn't [14] necessarily mean that I received it on that date but that is [15] the date of this report.

[16] Q So essentially the investigation was completed in [17] March of 2003?

[18] A Correct.

[19] MS. MCDONALD: I am going to show you Exhibit 9 [20] and ask you to look at that.

[21] (Exhibit No. 9 marked for [22] identification.)

[23] MS. MCDONALD: I'm all out of order.

[24] THE WITNESS: Okay.

[25] BY MS. MCDONALD:

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[1] Q And do you recall whether the order was extended [2] into 2004?

[3] A I, I don't know.

[4] Q Okay. Let's go back to the investigation.

[5] A Okay.

[6] MS. MCDONALD: Let me show you Exhibit 6. And I [7] would ask you to take a look at that.

[8] (Exhibit No. 6 marked for [9] identification.)

[10] (Pause)

[11] BY MS. MCDONALD:

[12] Q Do you recognize that document?

[13] A No this is an Office of Internal Affairs' [14] document.

[15] Q Have you ever seen that document?

[16] A Not that I recall.

[17] (Exhibit No. 7 marked for [18] identification.)

[19] MS. MCDONALD: Okay. Let me show you Exhibit 7.

[20] (Pause)

[21] THE WITNESS: Yes.

[22] BY MS. MCDONALD:

[23] Q Have you ever, first of all, what is that [24] document?

[25] A It's an OIA, Office of Internal Affairs

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[1] Q Do you recognize that document?

[2] A Yes I do.

[3] Q And what is it?

[4] A It's a letter of proposal to Officer Reynoso for a [5] suspension of thirty days for off duty misconduct.

[6] Q And who drafted that this document?

[7] A It would be either done by the Captain or the [8] Human Resource Department.

[9] Q The document is signed by Michael Bollinger,

[10] correct?

[11] A Correct.

[12] Q And it's also signed as being received by Officer

[13] Reynoso?

[14] A Correct.

[15] Q And what is the date on the document?

[16] A That Mr. Reynoso signed or -?

[17] Q The date it was drafted?

[18] A June 4th.

[19] MR. WILMOT: Objection.

[20] BY MS. MCDONALD:

[21] Q And now did you meet with Officer Reynoso prior to

[22] issuing him discipline?

[23] A I'm sure I met him on several occasions.

[24] Q In regard to this incident?

[25] A Correct.

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[1] Q Do you recall the substance of your conversations [2] with Mr. Reynoso during those meetings?
 [3] A The conversations were I met with Ms. O'Donnell on [4] a couple of occasions, probably just as much as I did with [5] Mr. Reynoso, advising both of them that there was a fifty [6] yard restraining order and that they would have to maintain [7] that. If there's any violations, I need to be aware of it.
 [8] Prior to any other meetings, Ms. O'Donnell came to [9] my office on several occasions where the conversations were [10] about I don't remember.
 [11] There's no one time I remember Mr. Reynoso coming [12] to my office. That was to tell him about the separation [13] issue.
 [14] Q Okay. You don't remember calling him to your [15] office of having a meeting with him with regard to his [16] discipline?
 [17] A Prior to his discipline?
 [18] Q Or at the set time it was handed out or-?
 [19] A Not that I recall.
 [20] MS. MCDONALD: Okay. I am going to show you [21] Exhibit 10. If you could review that.
 [22] (Exhibit No. 10 marked for [23] identification.)
 [24] THE WITNESS: Okay.
 [25] BY MS. MCDONALD:

[1] language, he had not yet received his suspension at the time [2] you had met with him?
 [3] A Well, after reading the first sentence, it sounds [4] like this is Mr. Reynoso's written response to the proposal [5] or his discussion with me to his response to the proposal.
 [6] Q Okay.
 [7] A Because I'm not sure there was a proposal that was [8] also done for termination.
 [9] Q You think there may have been a proposal that he [10] be terminated?
 [11] A There was a proposal for termination.
 [12] Q And is that a written document that you've seen?
 [13] A No. Because Central Office advised me that this [14] case would not be a termination case or excuse me, the [15] Regional Office or Central Office, I can't recall, advised [16] me this would not be a termination case.
 [17] Q So who proposed that he be terminated?
 [18] A That would be the Captain who would propose [19] termination.
 [20] Q And that would have been a verbal proposal?
 [21] A No, that would have been a proposal written and [22] then sent up for review to the Region and Central Office [23] prior to the employee seeing the proposal of termination.
 [24] Q Okay. So the Captain, in this case, Captain [25] Bollinger?

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[1] Q Do you recognize that document?
 [2] A Yes I do.
 [3] Q And what is that document?
 [4] A I don't know if this is a response from him [5] regarding the proposal matter or-
 [6] Q Well, what is the title of the document, I guess [7] on the first page?
 [8] A Meeting with Mr. Reynoso.
 [9] Q And who is it from?
 [10] A It's from me.
 [11] Q And is this just something that you typed up for [12] the file or, do you recall?
 [13] MR. WILMOT: Objection. You can answer.
 [14] THE WITNESS: Mr. Reynoso, no, this could have [15] been during his probation period after I have given the dis [16] - I'm not sure when this memo or our discussions occurred.
 [17] Whether it was in between the proposals, in [18] between after I gave him discipline, I'm not quite sure.
 [19] BY MS. MCDONALD:
 [20] Q Let me call your attention to the first line.
 [21] A Okay.
 [22] Q On Tuesday, June 17, 2003 at 8:30 a.m., a meeting [23] was held between Warden Winn and David Reynoso regarding his [24] proposed suspension.
 [25] Would it be fair to say that based on that

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[1] A Bollinger.
 [2] Q Bollinger. Would have prepared a proposal for [3] termination?
 [4] A Or the Human Resource Manager and Mr. Bollinger [5] would have signed it, if he agreed. If he agreed with the [6] termination.
 [7] Q And that was forwarded to the Central Office?
 [8] A Regional Office.
 [9] Q Regional Office. And they, do you know if they [10] received this proposal?
 [11] A Well, they received the proposal and advisement [12] was given that this would not be a termination case.
 [13] Q A verbal advisement or written advisement?
 [14] A I don't know whether it was written or verbal.
 [15] Q But you recall, do you recall speaking with [16] somebody about this at the Regional Office.
 [17] A No, I don't talk to people in the Regional Office [18] about discipline.
 [19] Q Okay. Just somehow it came to your attention that [20] this was not a case for termination?
 [21] A Correct.
 [22] Q You don't recall how, how it came to your [23] attention?
 [24] A Well, through my Human Resource Manager.
 [25] Q Oh, okay. Do you recall whether at the time-?

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[1] A Do you want this back?
 [2] Q No, you can hang on to it.
 [3] A Okay. I've got a couple of them here. Okay, go [4] ahead.
 [5] Q Whether at the time that you met with Mr. Reynoso [6] and were considering what discipline you should give him, do [7] you recall whether he had any prior discipline?
 [8] A At that time that I met with him while he was [9] giving me his response?
 [10] Q Or anywhere in the time that you had received the [11] investigative report and you were trying to make a [12] determination as to what discipline was warranted in that [13] time period?
 [14] A If I remember correctly, he had a DUI.
 [15] Q And was that a recent occurrence close in time to [16] -?
 [17] A To, I'm not certain.
 [18] Q Okay. And I believed you testified earlier that [19] would be a Category Three -?
 [20] A Correct.
 [21] Q Offense?
 [22] A Correct. A DUI.
 [23] Q A DUI would be. And I believe you testified that [24] an assault between staff members, initially, this particular [25] assault was classified as a Category One or a Category Two?

[1] Q Okay. So there wasn't just one, we're just [2] talking about Mr. Reynoso.
 [3] A Okay.
 [4] Q I believe you testified that you had changed his [5] work hours within five days of the incident or so?
 [6] A Correct.
 [7] Q And that was back in April, maybe the beginning of [8] May of 2003, correct? Sorry, 2002?
 [9] A Yeah, correct.
 [10] Q And now this document is saying, dated June 17, [11] 2003, states that you may have to change his work hours?
 [12] A That is correct. Based upon. I don't know the [13] exact date I gave him his discipline of twenty-one days. [14] The meeting if I recall correctly, was regarding that [15] because he was still on probation, that I would have to [16] continue to change his hours.
 [17] And I think that's part of this memo why I [18] discussed it with him. That, even though you've had your [19] disciplinary process, even though it's over, it's not over. [20] That I'm going to continue with the restraining order of the [21] fifty feet, the fifty yards, excuse me, until the [22] probationary period ended.
 [23] Because I think in his mind, it ended after the [24] Court hearing or whatever. I'm not certain. But I want to [25] make it clear to him that I would still keep him separated

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[1] A Actually, I don't know what Central Office [2] categorized it. I set it up and they categorized it.
 [3] Did they categorize it as a one or two? I never [4] got a call back. I'm waiting on what they're categorizing [5] and who's going to do the investigation.
 [6] Q Okay. So, was it ever downgraded to a Category [7] Three or the category never came up again?
 [8] A Actually, the category never came up again but [9] they did authorize a local investigation.
 [10] Q Okay. But they could do that even for a Category [11] One or a Category Two? They could authorize a local-?
 [12] A They could.
 [13] Q Okay.
 [14] A They could.
 [15] Q Let me refer you in Exhibit 10 to the second to [16] the last paragraph. Do you see where it says Warden Winn [17] told Mr. Reynoso he may have to make some decisions that [18] could affect him, such as changing his work hours?
 [19] A Mm-hmm.
 [20] Q What is the date on this document?
 [21] A June 17, 2003.
 [22] Q Hadn't you already changed Mr. Reynoso's work [23] hours by this point in time?
 [24] A I changed work hours for both employees on [25] numerous occasions through this whole process.

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[1] from Ms. O'Donnell.
 [2] MS. MCDONALD: Okay. I am going to show you [3] Exhibit 11.
 [4] (Exhibit No. 11 marked for [5] identification.)
 [6] THE WITNESS: Okay.
 [7] BY MS. MCDONALD:
 [8] Q Do you recognize that document?
 [9] A Yes I do.
 [10] Q And what does that, what is that document?
 [11] A This is a proposal for suspension for thirty days [12] for off duty misconduct.
 [13] Q Is this a proposal or is this his actual-?
 [14] A Oh, I'm sorry.
 [15] Q Discipline?
 [16] A This is his actual discipline.
 [17] Q But you just stated initially that it was proposed [18] that he be suspended for thirty days, correct?
 [19] A Correct.
 [20] Q And you decided that he, that he would be [21] suspended for twenty-one days?
 [22] A That is correct.
 [23] Q Now it says in the third paragraph. You discussed [24] what you considered in determining what discipline would be [25] appropriate.

[1] Do you see that?
 [2] A Yes.
 [3] Q And in the last sentence, you refer to a prior [4] discipline?
 [5] A Correct.
 [6] Q And that he had been disciplined twice in five [7] years?
 [8] A Well, it says this is your second, which would [9] include this one, I would think.
 [10] Q Okay. Do you know if at the time Mr. Reynoso [11] served his suspension, he was paid?
 [12] A No.
 [13] Q You don't know or he wasn't paid?
 [14] A Do I--
 [15] Q At the time that he served the suspension. During [16] the time he was actually out of work, was he paid?
 [17] A Was he paid? No.
 [18] Q He wasn't?
 [19] A At the time of his suspension, no, he wasn't paid.
 [20] Q Is a DUI classified as off duty misconduct?
 [21] A Yes.
 [22] MS. MCDONALD: I am going to show you this [23] document.
 [24] (Exhibit No. 12 marked for [25] identification.)

[1] A Yes.
 [2] Q Okay, but you don't recall issuing that discipline [3] to Mr. Reynoso?
 [4] A Well, at the time, I had thirty-five cases. They [5] were all computer related. Do I remember? No, I don't.
 [6] MS. MCDONALD: Okay. Let me show you another one.
 [7] (Exhibit No. 13 marked for [8] identification.)
 [9] BY MS. MCDONALD:
 [10] Q And can you just state for the record what that document is?
 [12] A Again, a Personnel Action.
 [13] Q For? For who?
 [14] A David Reynoso.
 [15] Q And what is this one requesting or regarding?
 [16] A Off duty misconduct.
 [17] Q And what is the date of this document?
 [18] A Effective date March 3, 2003.
 [19] Q And that was another suspension?
 [20] A It says suspension no later than March 3, 2003, so [21] I would have to agree that it's another suspension.
 [22] Q But you don't recall what the off duty misconduct [23] was?
 [24] A Well--
 [25] Q Let me ask you another question.

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[1] (Pause)
 [2] THE WITNESS: Okay.
 [3] BY MS. MCDONALD:
 [4] Q Do you recognize that document?
 [5] A Yeah, it's a personnel action.
 [6] Q And what is that for? That document? What's the [7] purpose of that document?
 [8] A It's a, well, it's a notice of action that I [9] signed but it's, gives an effective date of suspension.
 [10] The document seems incomplete to me.
 [11] Q Is this something that goes to payroll? For [12] payroll purposes?
 [13] A It goes to payroll and they're supposed to follow [14] the Personnel Action.
 [15] Q Who is this form about?
 [16] A It's David Reynoso.
 [17] Q And let me refer you to the second page of that [18] document. At the very end, under Part F Remarks.
 [19] A Okay. Inappropriate use of a government computer.
 [20] is that correct?
 [21] Q Yeah. Do you remember anything about that [22] incident?
 [23] A No, I don't.
 [24] Q This document states that he was suspended for [25] inappropriate use of a government computer?

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[1] A Well--
 [2] Q Is it possible that this suspension was the [3] suspension he received with regard to the incident with [4] Ms. O'Donnell, based on that date?
 [5] Only if you know, if you don't know--?
 [6] A I don't know but -
 [7] Q Okay.
 [8] A Because there's some things marked out that, I'm [9] not sure what the suspension was for.
 [10] MS. MCDONALD: Okay. I'm going to show you [11] another one. I don't know if it will help or not.
 [12] (Exhibit No. 14 marked for [13] identification.)
 [14] BY MS. MCDONALD:
 [15] Q Exhibit 14. Is that another Personnel Action form [16] for David Reynoso?
 [17] A That's correct.
 [18] Q And is that also regarding a suspension for off [19] duty misconduct?
 [20] A Yes it is.
 [21] Q And what is the date on that document?
 [22] A Effective date is July 27, 2003.
 [23] Q And as far as you remember, Mr. Reynoso received a [24] suspension for his DUI?
 [25] A Correct.

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[1] Q And he also received a suspension for the incident
 [2] with Ms. O'Donnell?
 [3] A Correct.
 [4] Q And a third suspension for unauthorized use of a
 [5] government computer?
 [6] A That's correct, which I didn't realize until [7] today.
 [8] Q Okay. But we're unsure of what Personnel Action [9] form
 goes with which off duty misconduct, correct?
 [10] A Well, I am. Because at the time, as the [11] discipline
 would be given out, that a Personnel Action would [12] come up to
 me.
 [13] Q Okay. Do you consider an assault and battery with [14] a
 dangerous weapon on a staff member similar in seriousness
 [15] to a DUI?
 [16] A I would say it's more serious than a DUI.
 [17] Q And in considering discipline for a DUI, actually,
 [18] strike that.
 [19] Do you recall the length of the suspension that [20] Officer
 Reynoso received for his DUI?
 [21] A One day if I remember correctly.
 [22] Q Okay.
 [23] MS. MCDONALD: Do you want to break for lunch?
 [24] MR. WILMOT: What time is it?
 [25] MS. MCDONALD: It's 12:00.

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[1] MR. WILMOT: 12:00, sure. A half hour or is that [2] enough
 time?
 [3] MS. MCDONALD: How about forty-five minutes?
 [4] MR. WILMOT: Okay.
 [5] MS. O'DONNELL: I have a doctor's appointment at
 [6] quarter to one.
 [7] MS. MCDONALD: That's fine.
 [8] MS. O'DONNELL: I could come right back. It's [9] right
 down the street.
 [10] MS. MCDONALD: That's fine. We can go off the
 [11] record.
 [12] (Off the record at 12:00 p.m.)

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[1] Q Okay. And the other officers in that department, [2] do
 they have similar job functions as Officer Reynoso?
 [3] A Yes.
 [4] Q They all kind of do the same things?
 [5] A Yes.
 [6] Q Except for Darren Brown who does investigations?
 [7] A Correct.
 [8] Q Okay.
 [9] MR. WILMOT: Just to clarify, you're talking about [10] when
 Reynoso was in that department or-?
 [11] BY MS. MCDONALD:
 [12] Q Yes, I understand that he is no longer in the SIS
 [13] Department, is that, is that correct?
 [14] A No he is not.
 [15] Q Okay. So I am talking about the period of time [16] from
 April 8, 2002 until he was transferred out of that [17] department.
 [18] And why was he, why was he transferred out of that
 [19] department?
 [20] A I don't know.
 [21] Q Okay. Do you know whether Officer Reynoso started
 [22] in the SIS Department or whether he was something else
 [23] before he was an SIS officer?
 [24] A I don't know. I don't know.
 [25] Q Are SIS officers capable of performing the job

[1] duties in the other departments of the institution?
 [2] A All staff are.
 [3] Q All staff are able to rotate throughout -
 [4] A All staff are capable of doing different, during, [5] all staff are capable of performing other duties. For [6] example, an emergency.
 [7] Q So, based on needs of service, type thing?
 [8] A Right.
 [9] Q Did Colleen ever express her fears in regard to [10] Officer Reynoso to you?
 [11] A Yes.
 [12] Q Either verbally or in writing?
 [13] A Yes.
 [14] Q Did she express them verbally?
 [15] A In writing. I don't recall verbally. But I know [16] it was in writing.
 [17] MS. MCDONALD: Okay. I am going to show you a [18] document that is marked Exhibit 15.
 [19] (Exhibit No. 15 marked for [20] identification.)
 [21] (Pause)
 [22] BY MS. MCDONALD:
 [23] Q Do you recognize that document?
 [24] A Yes I do.
 [25] Q You can hang on to it. And what is that document?

[1] A Yes.
 [2] Q Did you take any action in response to this memo?
 [3] A No I did not.
 [4] Q Did you ever receive notice that Officer Reynoso [5] violated the terms of his violation by firing a weapon at [6] work?
 [7] A Yes I did.
 [8] Q And can you tell me about that? How you received [9] that notice or what you recall about that incident?
 [10] A I can't recall who told me. What I do remember is [11] the person that told me had mentioned that Mr. Reynoso was [12] at firearms training, firing a weapon and that Ms. O'Donnell [13] had called probation to report it.
 [14] And I asked that person, which I cannot remember [15] who the person is, was that true and the person did say yes [16] he did and so I said okay. And I called the Probation [17] Department and reported the violation?
 [18] Q You did?
 [19] A Yes I did. In case it wasn't reported.
 [20] Q So you had no knowledge of him being at firearms [21] training?
 [22] A Not until I was notified that he had already been [23] out there and shot.
 [24] Q And who would have assigned him there?
 [25] A It would be the Employee Development Manager.

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[1] A It's a memorandum to me from Colleen O'Donnell [2] indicating her issue of feeling unsafe. I would summarize [3] it like that.
 [4] Q And what is the date of the document?
 [5] A May 13, 2002.
 [6] Q And did you take any action in response to this [7] document?
 [8] A No, I did not.
 [9] (Exhibit No. 16 marked for [10] identification.)
 [11] MS. MCDONALD: Let me show you this document.
 [12] THE WITNESS: Okay.
 [13] BY MS. MCDONALD:
 [14] Q Do you recognize that document?
 [15] A Yes I do.
 [16] Q And what is that document?
 [17] A It's a memo for Steve Gagnon, Inmate Systems [18] Officer, from Colleen O'Donnell regarding safety issues.
 [19] Q And you have seen this document before?
 [20] A Yes I have.
 [21] Q And what's the date on it?
 [22] A June 10, 2002.
 [23] Q And is it, is it fair to say that this is an [24] additional memo from Ms. O'Donnell regarding her concern, [25] her fears or concerns with regard to David Reynoso?

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[1] Q And who was that?
 [2] A At the time?
 [3] Q Yes.
 [4] A It would have been Karen Parrott?
 [5] Q Karen Parrott?
 [6] A Mm-hmm.
 [7] Q Did you conduct any kind of investigation in, [8] regarding how he got assigned there?
 [9] A No.
 [10] Q Did you do anything in regard to this incident [11] other than phone the Probation Department?
 [12] A No.
 [13] Q Do you recall who you spoke to at the Probation [14] Department?
 [15] A I asked for Mr. Reynoso's probation officer. It [16] was a female. I can't recall the name.
 [17] Q Okay. Did you ever give a statement to any court [18] official or district attorney or any other person in regard [19] to Officer Reynoso assigned to train and shoot on the firing [20] range?
 [21] A Not that I can recall. I remember calling the [22] Probation Officer.
 [23] Q You didn't testify for him at the court [24] appearance, did you?
 [25] A No.

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[1] Q If I suggested to you that the testimony at the [2] hearing was that you ordered Officer Reynoso to shoot at the [3] firing range, would that be accurate?

[4] A No.

[5] (Exhibit No. 17 marked for [6] identification.)

[7] MS. MCDONALD: Let me show you--

[8] THE WITNESS: Okay.

[9] BY MS. MCDONALD:

[10] Q Does that, do you recognize that document?

[11] A Yes.

[12] Q And what is that document?

[13] A It's a memorandum from me through Darren Brown [14] from David Reynoso indicating that he did fire a firearm and [15] that he had a hearing, a probation violation hearing for [16] November 20, 2003.

[17] Q And what is the date of this memo?

[18] A November 13, 2003.

[19] Q And does this memo refresh your recollection at [20] all as to who informed you of the probation violation?

[21] A Honestly, no.

[22] Q Okay. Is inmate transport a part of Officer [23] Reynoso's job duties in SIS?

[24] A If he signs up for overtime, or an emergency [25] situation happens or if he signs up for overtime.

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[1] MR. WILMOT: Objection. You can answer.

[2] THE WITNESS: Not that I recall. No.

[3] BY MS. MCDONALD:

[4] Q You don't recall her ever asking to be put back on [5] her regular hours?

[6] A Not that I recall.

[7] Q Do you recall her at any point asking to be [8] allowed to rotate back in her department?

[9] A Not that I recall.

[10] Q Do you recall the, strike that. If I suggested to [11] you that Officer Reynoso pled to sufficient facts for [12] finding of guilty and received a continue without a finding [13] in January 2003, would that be accurate?

[11] A Do you recall that?

[12] A Yes.

[13] Q And do you recall Ms. O'Donnell approaching you [14] and expressing concerns or fears because Officer Reynoso, in [15] her words, was convicted?

[16] A I don't recall that at all.

[17] Q Do you recall having any conversation with her [18] very soon after that court date?

[18] Within a few days of that court date?

[19] A Not that I recall.

[20] Q Okay. At some point, did you receive notice that

[21] Ms. O'Donnell needed a medical leave of absence?

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[1] Q And does the transportation of inmates require the [2] use of a firearm?

[3] A One officer has a firearm on him, that's correct.

[4] Q And is there more than one officer on the [5] transport?

[6] A Yes. Could be two, could be three.

[7] Q Could it ever be one?

[8] A It could be one with a camp inmate. It could be.

[9] Q Okay. But only one officer would have a firearm?

[10] A Correct.

[11] Q And do you have any knowledge of Officer Reynoso [12] transporting any inmates at the time he was on probation?

[13] A No.

[14] Q And subject to the restraining order?

[15] A No. Except for the memo that was brought to my [16] attention. I think it was -

[17] (Pause)

[18] Umm, ahh.

[19] Q You believed someone mentioned it in a memo?

[20] A Could have, yeah.

[21] Q But you don't recall who?

[22] A No.

[23] Q Okay. When, strike that. After you, after April [24] 8, 2002, when you changed Ms. O'Donnell's work hours and

[25] assignment, did she complain to you about that change?

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[1] A Repeat that question again. I'm sorry.

[2] Q At some point in 2003, did you receive notice or [3] did you hear that Ms. O'Donnell needed a leave, a medical [4] leave of absence?

[3] A Well throughout the period, probably at that time, [6] I received many medical documentation regarding her medical [7] health.

[4] Around that time, I'm sure I did. I would have to [9] look at a document.

[5] Q Okay. When Ms. O'Donnell informed you of the [6] assault on April 8, 2002, was she upset?

[6] MR. WILMOT: Objection. You can answer.

[7] THE WITNESS: She was upset and had tears in her [8] eyes.

[8] MS. MCDONALD: Let me show you -

[9] (Exhibit No. 18 marked for [17] identification.)

[10] (Pause)

[11] THE WITNESS: I don't remember seeing this [12] document.

[13] BY MS. MCDONALD:

[14] Q Okay. Do you know what it is?

[15] A It's a medical, it's a medical report from her [24] doctor, I guess. From doctor, I can't read the position [25] signature, but from a doctor.

[1] Q Now that document appears to actually be a portion [2] of perhaps a larger document. And there are some numbers in [3] the upper right hand corner.
 [4] Do you have any idea what document this may be a [5] part of?
 [6] A No.
 [7] Q Could it have been a request for some sort of [8] leave?
 [9] A I don't know. Because I've never, I don't recall [10] seeing this particular document.
 [11] (Exhibit No. 19 marked for [12] identification.)
 [13] MS. MCDONALD: Okay. Let me show you this one.
 [14] THE WITNESS: Yeah, I - I know this document.
 [15] BY MS. MCDONALD:
 [16] Q Okay. You received that document?
 [17] A Yes.
 [18] Q And what is that document?
 [19] A It's a medical report of Colleen O'Donnell dated [20] January 31, 2003.
 [21] Q And is that from her doctor.
 [22] A It's from a doctor, yes.
 [23] Q Doctor George Milow?
 [24] A Right.
 [25] Q And does this document indicate that Ms. O'Donnell

[1] was the doctor note that I had a staff psychiatrist - I [2] wanted additional information.
 [3] I'm not a doctor. I'm not a psychiatrist. What [4] the treatment in my - again, I'm not a psychiatrist, the [5] treatment plan was basically to remove Reynoso or they [6] couldn't work in the same environment. That's the treatment [7] plan.
 [8] That didn't sound like a very good treatment plan [9] to me, even though I'm not a doctor or psychiatrist. I had [10] a psychiatrist read one of these doctor's note. I think it [11] was this doctor's note, to explain to me if that is a good [12] treatment plan or not. Or what his thoughts were.
 [13] So if this is the doctor's note, I gave it to a [14] staff psychiatrist and the psychiatrist provided me that he [15] needed more information from the doctor which I requested to [16] get permission from Ms. O'Donnell to get that.
 [17] Q Okay, and -
 [18] A Before I made a decision.
 [19] Q A decision on?
 [20] A Any decision what to do with Ms. O'Donnell or
 [21] Mr. Reynoso, keeping them separated.
 [22] Q Okay. Was Ms. O'Donnell requesting some form of
 [23] leave at this time, in this time period?
 [24] A If she was running out of leave without pay, yes.
 [25] Q Do you recall whether you granted her

[1] suffers from post traumatic stress disorder?
 [2] A Yes it does.
 [3] Q And does it related to what her symptoms are?
 [4] A Yes.
 [5] MR. WILMOT: Can we go off the record for a [6] moment?
 [7] MS. MCDONALD: Sure.
 [8] (Off the record at 1:11 p.m.)
 [9] (On the record at 1:13 p.m.)
 [10] BY MS. MCDONALD:
 [11] Q Okay. I believe the question was does this note [12] indicate to you what Ms. O'Donnell's symptoms, her post [13] traumatic stress disorder were?
 [14] A Yes.
 [15] Q And does the doctor indicate in this note, any [16] action that may be taken to alleviate Ms. O'Donnell's [17] symptoms?
 [18] A Yes.
 [19] Q And what does he recommend?
 [20] A Well, he recommends that Ms. O'Donnell not be [21] required to work in the same facility as Mr. Reynoso.
 [22] Q Did you take any action in response to this [23] letter?
 [24] A There were several doctor notes given to me around [25] this period of time, if I remember correctly. I think this

[1] administrative leave?
 [2] A I don't recall if I granted her administrative [3] leave at this particular time. I did grant her [4] administrative leave throughout the situation.
 [5] I could, I don't recall. I don't remember. At [6] the same time, I was getting two or three doctor's notes. [7] And I'm - one doctor's note, I granted an extension of [8] administrative leave or leave without pay to get more [9] information back.
 [10] Q Okay.
 [11] A From her doctor.
 [12] Q Now, also around this time, did you at some point, [13] become aware that Ms. O'Donnell had hired an attorney?
 [14] A I got a letter, I think, from Mr. Rizzitelli, if I [15] remember correctly, around the same time. Roughly around [16] the same time.
 [17] Q Okay. So you, who did you make a request of that [18] they obtain further medical information from Ms. O'Donnell [19] or her doctor?
 [20] A If I remember correctly, her supervisor, [21] Mr. Gagnon, made a phone call to Ms. O'Donnell. I can't [22] remember if it was a written request from myself for [23] additional information but I know a phone call was made to [24] get permission to get additional information.
 [25] Q And do you know whether an authorization or

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[1] release for medical information was sent to Ms.O'Donnell
 [2] with a request that she sign it?
 [3] A No I do not.
 [4] Q Okay. Other than the two or three doctor's notes [5] that you think you received during this period of time, did [6] you receive any further medical information from [7] Ms.O'Donnell or her attorney or her doctor?
 [8] A Well, I kept receiving a letter from [9] Mr.Rizzitelli.
 [10] Q And do you recall the content of those letters?
 [11] A I think, the first letter was I'm representing
 [12] Ms.O'Donnell. Any issues or concerns, go through me, which
 [13] I never responded to.
 [14] Q Did you disregard his letter of representation?
 [15] A No.
 [16] Q Okay. You just -
 [17] A Colleen O'Donnell never came me permission to talk
 [18] to Mr.Rizzitelli. So I guess I did disregard his letters [19] until I got permission.
 [20] Q And is it required that you obtain permission to
 [21] speak to an employee's attorney?
 [22] A Yes.
 [23] Q Is that a Bureau of Prison's policy?
 [24] A It's a privacy policy, as far as I'm concerned.
 [25] Q Okay.

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[1] A Yes.
 [2] Q And what is the date of this letter?
 [3] A January 27, 2003.
 [4] Q Do you have a memory, does this refresh your [5] memory as to whether Ms.O'Donnell asked you for an [6] accommodation prior to January 27, 2003?
 [7] A She must have or I wouldn't have written this [8] letter.
 [9] Q Okay.
 [10] A Whether it was written. Verbal or written.
 [11] Q Okay. You state in the second paragraph that you
 [12] provided an accommodation for her situation since April of
 [13] 2002.
 [14] Do you see that?
 [15] A Yes.
 [16] Q And what situation were you referring to?
 [17] A Her incident and alleged assault down at Mirror
 [18] Lake.
 [19] Q And at the end of that second paragraph, you state
 [20] that you can further restrict his, meaning Officer Reynoso's
 [21] work area to the camp if she believes it's a viable
 [22] accommodation.
 [23] Do you see that?
 [24] A Yes I do.
 [25] Q And in the next paragraph, you ask her to advise

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[1] A It wouldn't be right to give information about a [2] staff member to anybody whether it's a public person or [3] attorney until I get written permission.
 [4] Q Okay. Did Ms.O'Donnell and/or her attorney, [5] request a reasonable accommodation for her post traumatic [6] stress disorder?
 [7] MR. WILMOT: Objection. You can answer.
 [8] THE WITNESS: Her attorney may have, [9] Mr.Rizzitelli?
 [10] MS. MCDONALD: Yes.
 [11] THE WITNESS: I can't, the best I can recall, is I [12] think in one of Mr.Rizzitelli's letter requested [13] accommodation. Now whether I had permission at that point, [14] to talk to him, I can't recall.
 [15] MS. MCDONALD: Okay.
 [16] THE WITNESS: If she gave me permission, then I [17] did address the letter to him.
 [18] MS. MCDONALD: Okay. I am going to show you this [19] document.
 [20] (Exhibit No. 20 marked for [21] identification.)
 [22] THE WITNESS: Yes, I recall this.
 [23] BY MS. MCDONALD:
 [24] Q Is it fair to say that you are responding to a [25] request of Ms.O'Donnell for an accommodation?

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[1] you in writing is that accommodation is acceptable.
 [2] Do you see that?
 [3] A Yes.
 [4] Q Did anyone ever respond to this letter in regard [5] to the accommodation that you offered Ms.O'Donnell?
 [6] A Can you repeat the question, I'm sorry. I was [7] reading the letter again.
 [8] Q Do you recall whether anyone responded to your [9] offer of an accommodation?
 [10] A I don't think I got a response for this letter.
 [11] Q One way or another?
 [12] A I can't recall.
 [13] MS. MCDONALD: Okay. Thanks. They're all [14] different. This is much better.
 [15] (Exhibit No. 21 marked for [16] identification.)
 [17] (Pause)
 [18] THE WITNESS: Okay.
 [19] BY MS. MCDONALD:
 [20] Q Do you recall receiving this letter?
 [21] A Yes.
 [22] Q Did you have prior dealings with Attorney [23] Rizzitelli prior to his representation of Ms.O'Donnell?
 [24] A Yes.
 [25] Q And did, if you know, did Cindy Lord have prior

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[1] dealings with Attorney Rizzitelli?
 [2] A Yes.
 [3] Q Were those dealings difficult?
 [4] MR. WILMOT: Objection. You can answer.
 [5] A With me?
 [6] Q Yes. Between you and Attorney Rizzitelli?
 [7] A I didn't think so.
 [8] Q Did Attorney Rizzitelli use to work here?
 [9] A No.
 [10] Q At Devens?
 [11] A No.
 [12] Q Did he work for the Bureau of Prisons?
 [13] A Yes.
 [14] Q Let me call your attention to the second [15] paragraph?
 [15] A Okay.
 [16] Q Where he seems to be, he's stating that he has not
 [17] been advised that Cindy's, I'm assuming Ms. Lord's, January
 [18] 9, 2003 request for a full medical release be retracted.
 [19] Does that statement refresh your memory as to [21] whether a
 [20] full medical release was sent to Ms. O'Donnell?
 [21] A No I don't.
 [22] Q Okay. Is it safe to say you usually handle those
 [23] matters?
 [24] A That I handle which matters?

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[1] MS. MCDONALD: Responsive to your offer of a
 [2] reasonable accommodation?
 [3] MR. WILMOT: Objection to the question. You can
 [4] answer.
 [5] THE WITNESS: I'm confused. I'm sorry.
 [6] MS. MCDONALD: That's okay. That's okay. I'll [7] start over.
 [7] THE WITNESS: Okay.
 [8] BY MS. MCDONALD: In Exhibit, let me see that [10] letter
 [9] there, 20, letter of January 27, 2003. In the second [11] paragraph
 [10] A Right.
 [11] Q You offer an accommodation -
 [12] A Correct.
 [13] Q To restrict Officer Reynoso to the camp.
 [14] A Okay.
 [15] Q Is that correct?
 [16] A Yes.
 [17] Q Okay. And then you ask Ms. O'Donnell in that same
 [18] letter to notify you if the accommodation is acceptable -
 [19] A Correct.
 [20] Q Or not?
 [21] A Correct.
 [22] Q Right?
 [23] A Correct.

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[1] Q That you don't handle those matters. Obtaining
 [2] medical releases?
 [3] A No, usually H, the department, HR.
 [4] Q Okay. And let me call your attention to the third
 [5] paragraph. The second sentence states that you advised
 [6] Colleen that you would be willing to restrict Officer [7] Reynoso
 [7] to the camp. This may be in response to an [8] accommodation.
 We thank you. Please elaborate on this [9] proposal.
 [10] Is that a response to your offer of a reasonable
 [11] accommodation?
 [12] MR. WILMOT: Objection. You can answer.
 [13] THE WITNESS: Obviously that's my response that I
 [14] placed him in the camp to bring her back to work.
 [15] BY MS. MCDONALD:
 [16] Q But is this letter responsive to your letter of [17] January
 [17] 27, 2003 wherein you offered to place Officer [18] Reynoso at the
 [18] camp?
 [19] MR. WILMOT: Objection. You can answer.
 [20] THE WITNESS: Is this my response.
 [21] MS. MCDONALD: Is this responsive, is this letter [22] dated
 February 10, 2003 from Ms. O'Donnell's attorney [23] requesting
 more information about the camp?
 [22] THE WITNESS: Okay.
 [23] MR. WILMOT: Objection. You can answer.

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[1] Q Is this letter of February 10, responsive to the [2] letter of
 January 27?
 [2] MR. WILMOT: Objection. You can answer.
 [3] THE WITNESS: While I'm talking, while I'm writing [5] the
 letter to Ms. O'Donnell, and in between that period of [6] time, I
 received permission to write, or excuse me.
 [7] BY MS. MCDONALD:
 [8] Q Well, let me try to ask you -
 [9] A Well, I think Ms. O'Donnell notified him and I [10] received
 this letter from him and he's asking me the [11] question. I don't
 know what the next memo to either one [12] that I wrote. I can't
 recall. I would have to look at the [13] next memo.
 [10] Q Okay. So you have no, do you know whether you
 [11] responded to this letter of February 10, 2003?
 [12] A I can't remember. I would have to look at the [17] next
 memo that's in order. I don't know.
 [13] (Exhibit No. 22 marked for [19] identification.)
 [14] MS. MCDONALD: I'm going to show you -
 [15] THE WITNESS: Okay. I remember this memo.
 [16] BY MS. MCDONALD:
 [17] Q Okay. And what is that memo?
 [18] A It's from Mr. Rizzitelli again saying by now we [25] should
 have made decisions regarding accommodation. This is

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[1] his second request.

[2] Q Is it fair to say that letter with the exception [3] of the boldface type over the top of it is identical to the [4] previous letter marked Exhibit 21.

[5] A Yes.

[6] Q So the only difference would be the boldface, [7] large font type that says no response received regarding [8] sent February 18, 2003?

[9] A Yes.

[10] MS. MCDONALD: Let me show you a document.

[11] (Exhibit No. 23 marked for [12] identification.)

[13] THE WITNESS: Okay.

[14] BY MS. MCDONALD:

[15] Q Do you recognize that document?

[16] A The same letter.

[17] Q And the only, is there anything different about [18] that letter?

[19] A Well, up on top it says U.S. Certified Mail [20] Received or Certified Mail No Response, Resent March 3rd.

[21] Q Otherwise the letter is identical to Exhibit 22?

[22] A Correct.

[23] Q And Exhibit 21, correct?

[24] A Correct.

[25] (Pause)

[1] Q Were you referring to the restraining order as [2] well?

[3] A Well, I had to take that into consideration when I [4] wrote the letter, yes.

[5] Q Can you explain the Voluntary Leave Transfer [6] Program to me?

[7] A There is a committee that meets. It's an [8] independent committee. If you ask me who's on it, I [9] wouldn't be able to tell you.

[10] But anyway they meet if an employee needs annual

[11] leave, sick leave. They make a request in writing to me or

[12] to Human Resource Development Manager. At that time, if I [13] get it, I sent it down. I tell the Committee to meet. I [14] don't know how Ms. Lord does it, but I do it that way.

[15] I tell them to meet, go over the facts and either [16] approve or deny it.

[17] Q And is this leave program, is this the one where

[18] other employees donate time?

[19] A Correct.

[20] Q And it's put into some kind of bank or-?

[21] A There's a national one you can get into or a local [22] one where an employee makes a request for leave, makes a [23] request for staff to loan their leave to them or give their [24] leave to them.

[25] Q Okay. And you are not on this committee, right?

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[1] MS. MCDONALD: Okay, you know what, I'm going to [2] have you look at this once first. I gave them to you out of [3] order.

[4] (Exhibit No. 24 marked for [5] identification.)

[6] (Pause)

[7] THE WITNESS: Yes. Okay. I know this memo.

[8] BY MS. MCDONALD:

[9] Q And what is that memo?

[10] A That's a letter to Mr. Rizzitelli from me [11] outlining our position on American Disabilities Act and [12] again, trying to accommodate the situation ensuring the work [13] schedules differ from each others and notifying him that the [14] Voluntary Leave Transfer Program Committee met and [15] determined that Ms. O'Donnell was not eligible or [16] disapproved her request.

[17] The decision is a final decision. It also [18] indicates that she was placed on AWOL status.

[19] Q In the second paragraph, the first sentence it [20] says I have provided accommodations for Ms. O'Donnell's [21] personal situation since April of 2002. And again, the word [22] situation, to what were you referring when you said the word [23] situation?

[24] A To the alleged assault at Mirror Lake on April [25] 8th.

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[1] A No.

[2] Q Do you know they denied Ms. O'Donnell voluntary [3] leave?

[4] A No.

[5] Q I've lost a document. I'll have to use this one. [6] I'm sorry, let's go off the record for one second.

[7] (Off the record at 1:40)

[8] (On the record at 1:40)

[9] (Pause)

[10] A I already have this document. This document that [11] you gave me.

[12] Q Okay. So that would explain where my copy went.

[13] Can you unmark this. I thought it looked [14] familiar.

[15] What is advanced sick leave?

[16] A A person could request advanced sick leave.

[17] Q but what does that mean? How does that differ [18] from sick leave or-?

[19] A Well, when a person runs out of sick leave and [20] needs sick leave, they can make a request to me requesting.

[21] I don't know the total amount they can request. Up to

[22] thirty days, sixty days, one hundred and twenty days, I

[23] don't know what the statute is on that but they can make a

[24] request to me for advanced, I can give them advanced sick

[25] leave.

[1] Q Is that like borrowing sick leave from the next [2] year or something?

[3] A No, you're not borrowing, you're actually, if I [4] approve that, I can give you thirty days advanced sick leave [5] and then it would be deducted from your sick leave, let's [6] say, you get four hours per pay period, or four hours per [7] pay period, and I advanced you thirty hours sick leave, when [8] you gain that four hours on your pay check, that four hours [9] would be deducted from your thirty hours.

[10] Q Okay.

[11] A And so on and so forth until you pay it back. So, [12] like if you want to call it borrowing, I guess you can call [13] it borrowing.

[14] Q Okay. And so what are the circumstances where you [15] would deny somebody advanced sick leave?

[16] A I would deny, number one, I have told all staff in [17] the institution through recalls from the last five years, [18] that don't abuse your sick leave. I told all staff that in [19] my recalls.

[20] And that you're pretty much at the mercy of the [21] Warden if you would request sick leave.

[22] If there's any kind of abuse, it would probably be [23] denied.

[24] If I got a doctor's note from an individual that [25] said is unable to return to work or there's no, and if I

[1] say hypothetically, I believe this medical release violates [2] my privacy rights and I'm not going to sign it, what would [3] you then say to her?

[4] Would you simply deny her request or--?

[5] A Well, number one, I would call her in or call any [6] person in, not necessarily Ms.O'Donnell, which I've had in [7] the past, and ask them well that's fine if that's what you [8] choose to do or we can talk about it and it's confidential [9] between the two of us. [10] And if I think it's a reasonable request, whether [11] they abuse their sick leave, whether they have sick leave or [12] they need sick leave, you know, I'm going to approve it.

[13] If it's a reasonable request and if they provide [14] me in as a confidential between that person and myself, it's [15] not going to go anywhere. If they still feel say like, I'm [16] not going to do it, then I'm not going to approve sick [17] leave, advanced sick leave. [18] I mean I have advanced sick leave, but I have to [19] know what the issues are and I have to have cooperation from [20] the staff person.

[21] Q Now in this case, you received notice from

[22] Mr.Rizzitelli that they objected to the medical release, [23] correct?

[24] A Well, I don't recall that. I don't recall that [25] they objected to that.

[1] requested medical documentation from a staff member and they [2] failed to provide me medical documentation, I wouldn't [3] approve it.

[4] Q Okay. So in Ms.O'Donnell's case, she, at some [5] point, gave you a doctor's note from her doctor saying that [6] she had post traumatic stress disorder and could not work, [7] is that correct?

[8] A That's correct.

[9] Q And is it fair to say she made various requests [10] for leave? Whether it be the Voluntary Leave Transfer [11] Program or Advanced Sick Leave, is that correct?

[12] A That's correct.

[13] Q And do you have a recollection of why [14] Ms.O'Donnell was denied Advanced Sick Leave as you sit here [15] today?

[16] A One doctor's note says unable to return to work, [17] and I requested additional medical documentation from [18] Ms.O'Donnell and she never supplied any more documentation [19] after I requested it.

[20] Q Do you recall her attorney objecting to the medial [21] authorization that was sent to Ms.O'Donnell?

[22] A He may have, but I'm not dealing with an attorney [23] on this case, I'm dealing strictly with Ms.O'Donnell and [24] her request.

[25] Q So if Ms.O'Donnell were to come back to you and

[1] Q Okay. You don't remember, but is it possible?

[2] MR. WILMOT: Objection. You can answer.

[3] THE WITNESS: I don't recall that they, I'm sorry, [4] what was your -

[5] BY MS. MCDONALD:

[6] Q Just whether you recalled either Colleen or her [7] attorney objecting to the medical release that was sent to [8] them?

[9] A I do not recall them objecting to the medical [10] release.

[11] Q Okay. Nobody ever told you that they objected to [12] the medical release?

[13] A Not that I recall.

[14] Q Okay. So because you denied Ms.O'Donnell [15] advanced sick leave, was she then placed on AWOL status?

[16] MR. WILMOT: Objection. You can answer.

[17] THE WITNESS: I don't know the given time. The [18] time span. She could have been given extended leave without [19] pay for a short period of time to give me doctor's, an [20] updated doctor's note but sometime during that period, she [21] was placed on AWOL status.

[22] BY MS. MCDONALD:

[23] Q Okay. And the period of time we're talking about [24] is approximately February of 2003?

[25] Do you have a recollection of that?

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[1] A It was around then. It could have been March. It [2] could have been February when she was placed on AWOL. I [3] know she was placed on AWOL status.

[4] Q Okay.

[5] A I don't know the exact date.

[6] Q You know that Ms.O'Donnell was placed on AWOL [7] status twice?

[8] A Correct, yes.

[9] Q And we're talking about the first incident of [10] AWOL, correct?

[11] Right now?

[12] A Well, honestly, I don't remember the dates.

[13] Q Okay.

[14] A I don't remember the dates. I know she was placed [15] on AWOL status.

[16] MS. MCDONALD: Okay. Let me show you this

[17] document.

[18] (Exhibit No. 25 marked for [19] identification.)

[20] (Pause)

[21] THE WITNESS: Okay.

[22] BY MS. MCDONALD:

[23] Q Do you recall that letter?

[24] A Yes.

[25] Q What is the date on that letter?

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[1] though?

[2] A Yeah, I did, I guess.

[3] Q At some point, did you receive notice from either

[4] Ms.O'Donnell or her attorney that she wanted to return to [5] work?

[6] A I received either correspondence or the supervisor [7] advised me Colleen wanted to come back to work.

[8] Q Okay. And did you take any action in that regard?

[9] A I don't know if I put anything in writing. I did [10] have the supervisor call Colleen and I mentioned that she [11] would have to have a doctor's note saying she could return [12] to work full duty. And that because of, I think it was [13] around the time that he, Mr.Reynoso was still on probation; [14] I still had to keep them separated.

[15] And I think in one of the doctor's notes, I think [16] it was before or after or during, the doctor even said she [17] should be at a different facility and I had the supervisor, [18] I put it in writing, that I can't remember, but we contacted [19] Colleen, Ms.O'Donnell and offered to place her at the camp.

[20] And she agreed to it verbally.

[21] Q I we talking about in June of 2003 right now?

[22] A I'm, I'm-

[23] Q You're not sure?

[24] A I'm not sure of the timeframe. I do know she [25] didn't want to come back to work. I offered her the camp.

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[1] A March 24, 2003.

[2] Q And what is this letter?

[3] A Well he's claiming that I'm not responding, that [4] I'm not corresponding responsively.

[5] Q Who is he?

[6] A Mr.Rizzitelli.

[7] Q Does he again ask you to elaborate on restricting

[8] Officer Reynoso to the camp?

[9] A Yes.

[10] MR. WILMOT: Objection to the question.

[11] Q And did you respond to this letter?

[12] A I don't recall.

[13] Q Do you recall ever responding or elaborating on

[14] your proposal to restrict Officer Reynoso to the camp?

[15] A No, I never elaborated. Because I gave him my [16] plan of action to put Mr.Reynoso at the camp. I thought it [17] was self-explanatory.

[18] Q Even though you received about five letters asking [19] for elaboration?

[20] MR. WILMOT: Objection. You can answer.

[21] THE WITNESS: Five, I think three of the five [22] letters or four of the five letters I never had permission [23] to talk to him.

[24] BY MS. MCDONALD:

[25] Q Okay. You had permission to talk to Colleen

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[1] Verbally she agreed to the camp and then she rescinded.

[2] She did not want to go to the camp.

[3] Q Okay.

[4] A I don't know if it was in June. I don't know if [5] it was in July. The timeframe, I-

[6] Q Okay. Let me just say that for the following [7] questions okay?

[8] You already stated that Ms.O'Donnell was twice [9] AWOL, correct?

[10] A Yes.

[11] Q You testified to that already. And if I suggest [12] to you that her first AWOL was from February 3, 2003 through [13] June 10, 2003, would that comport with your recollection of [14] the event?

[15] Does that time line ring any bells for you?

[16] A Right around that given time, yes, based upon that [17] I was not receiving any medical updates.

[18] Q Okay. But those are the dates?

[19] A I don't know if they were the exact dates

[20] Q Okay.

[21] A But right around that timeframe, you're correct.

[22] Q Okay. And then you received some kind of notice

[23] that she wants to return to work?

[24] A Correct.

[25] Q And if I suggest to you that Ms.O'Donnell

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[1] returned to work on June 11, 2003, does that comport with
 [2] your memories of that timeframe?
 [3] A No. I don't know when she came back to work.
 [4] Q Okay.
 [5] A The exact day or month.
 [6] Q Okay. Do you recall an incident where there was
 [7] vandalism to the mailroom?
 [8] A Yes.
 [9] Q And do you recall that was approximately five days
 [10] after Ms. O'Donnell's return to work?
 [11] A It was rather a short period of time. She came [12] back
 to work. Whether it was five days, but it did happen, [13] yes.
 [14] Q And the vandalism on the mailroom, strike that. [15] What
 was the vandalism on the mailroom?
 [16] A The vandalism was pornography. The exact wording,
 [17] I can't remember the exact wording. It was very
 [18] pornography-type wording towards Ms. O'Donnell.
 [19] The exact words now, I couldn't tell you the exact [20] words.
 [21] Q Okay. And was Ms. O'Donnell upset or emotionally
 [22] distressed over this incident?
 [23] A Yes.
 [24] Q And you, in fact, granted her administrative leave
 [25] because of that incident?

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[1] A I don't know. I would have to see the doctor's [2] note.
 [3] Q Okay.
 [4] MR. WILMOT: Would this be a good time to take a [5] quick
 break?
 [6] MS. MCDONALD: It would be a really good time so I [7] can
 straighten out my documents.
 [8] MR. WILMOT: Okay. Thanks.
 [9] (Off the record at 1:58 p.m.)
 [10] (On the record at 2:07 p.m.)
 [11] BY MS. MCDONALD:
 [12] Q What was your understanding of the accommodation
 [13] that Ms. O'Donnell and her attorney was requesting?
 [14] A At which time?
 [15] Q At any time.
 [16] A Well throughout the ordeal, was the removal of
 [17] Mr. Reynoso and she could come back to work.
 [18] Q Okay. The removal of Mr. Reynoso. What did you
 [19] take that to mean?
 [20] A The removal. The termination. To get, to remove [21] him
 from the institution.
 [22] Q Could he have been transferred to another
 [23] institution?
 [24] A No.
 [25] Q You don't have the authority to transfer staff?

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[1] A Yes.
 [2] Q Did you then, do you recall whether you received [3] an
 additional doctor's note from Ms. O'Donnell again taking [4] her out
 of work?
 [5] A Yes.
 [6] Q Did Ms. O'Donnell ever provide you with further
 [7] medical documentation following that incident?
 [8] A I don't recall. I'm sorry.
 [9] Q Okay. Did, you already testified that you gave [10] her
 administrative leave because of that event?
 [11] A Yes.
 [12] Q And do you recall whether she applied for any [13] other
 type of leave?
 [14] Whether it be leave without pay or advanced sick [15] leave
 because of that event?
 [16] A I believe she applied for leave without pay.
 [17] Q And did you grant that request?
 [18] A No.
 [19] Q And why not?
 [20] A Because again, I think, well, I requested [21] additional
 medical documentation.
 [22] Q And she did not provide it to you?
 [23] A I don't recall if she did or she didn't.
 [24] Q Okay. Well if she had provided it to you, would [25] you
 have granted her leave without pay?

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[1] A Well an investigation has not been completed. I [2] think
 he is innocent until proven guilty at this point.
 [3] Q Okay. Well, Ms. O'Donnell didn't get an attorney [4] until
 long after -
 [5] A Okay.
 [6] Q The incident, right?
 [7] A Okay.
 [8] Q And the investigation and his discipline was [9] following
 his court date, right?
 [10] A Correct.
 [11] Q And at his court date, he pled to sufficient facts [12] for
 finding of guilty, correct?
 [13] A Correct.
 [14] MR. WILMOT: Objection.
 [15] A Correct.
 [16] Q And the investigative report indicates that
 [17] Mr. Reynoso admitted to kicking Ms. O'Donnell, correct?
 [18] A Correct.
 [19] Q I forgot where I was going with this line of
 [20] questioning. Okay. Then her doctor gives you a note
 [21] following his plea saying that she is disabled and has post
 [22] traumatic stress disorder and can't come to work, correct?
 [23] A Yes.
 [24] Q At some point, she obtains an attorney?
 [25] A Correct.

[1] MR. WILMOT: Objection.
 [2] Q And then either she or he begin requesting
 [3] "reasonable accommodations"?
 [4] MR. WILMOT: Objection.
 [5] BY MS. MCDONALD:
 [6] Q Do you recall that?
 [7] MR. WILMOT: Objection. You can answer.
 [8] THE WITNESS: Yes.
 [9] BY MS. MCDONALD:
 [10] Q I'm sorry. I'm so tired. The questions are not [11] coming
 out very well.
 [12] At that time, between subsequent to Officer [13] Reynoso
 pleading, making his plea, and Ms. O'Donnell being [14] out of
 work for medical reasons in or about January, [15] February of
 2003?
 [16] A Okay.
 [17] Q What was the accommodation being requested at that
 [18] time?
 [19] MR. WILMOT: By whom are we talking about?
 [20] MS. MCDONALD: By either Ms. O'Donnell or her
 [21] attorney.
 [22] THE WITNESS: Around that time, I took the request [23] of
 accommodation to come back to work from Ms. O'Donnell.
 [24] The issue, I could do the best I could to accommodate her
 [25] and Mr. Reynoso.

[1] I mean, I couldn't do, I had no other options but [2] to keep
 them separated.
 [3] BY MS. MCDONALD:
 [4] Q Did Mr. Reynoso have a disability?
 [5] A Not that I'm aware of.
 [6] Q Okay. Did he make any requests for an
 [7] accommodation?
 [8] A No.
 [9] MS. MCDONALD: Let me show you this document.
 [10] (Exhibit No. 26 marked for [11] identification.)
 [12] THE WITNESS: Okay.
 [13] BY MS. MCDONALD:
 [14] Q Have you seen that document before?
 [15] A Yes.
 [16] Q And what is that document?
 [17] A It's a doctor's note indicating Ms. O'Donnell [18] suffers
 from post traumatic stress disorder. Totally [19] disabled. Unable
 to return to work. If Reynoso is not at [20] work premises at all,
 Ms. O'Donnell would be able to return [21] full-time without
 restrictions.
 [22] Q And what is the date of this note?
 [23] A Up on top? 1-8-03.
 [24] Q Okay. And does this, do you recall whether this [25] was
 the first doctor's note that you received for

[1] (Pause)
 [2] (Exhibit No. 27 marked for [3] identification.)
 [4] MS. MCDONALD: I am going to show you a document.
 [5] THE WITNESS: Yes I know this document.
 [6] BY MS. MCDONALD:
 [7] Q And what is this document?
 [8] A It's a document from me to Colleen O'Donnell to [9] you;
 cc'd you November 18th, outlining a job site for her to [10] work at.
 It's also advising her that she could go to the [11] staff dining hall,
 free to go around the institution, and [12] enter the main institution
 and I put in a time limit to go [13] to work, or excuse me, to go the
 staff dining room.
 [14] Q Okay.
 [15] A And that you can work overtime.
 [16] Q What's the date of this document?
 [17] A November 18, 2003.
 [18] Q When you state in the first paragraph that's this [19] is a
 response to her first message of November 12th, where [20] she
 informed you that she would like to return to work.
 [21] Does that refresh your memory as to when she asked [22] to
 come back to work?
 [23] A That is correct.
 [24] Q And you received a note from her doctor releasing
 [25] her to full-time duty without any restrictions.

[1] Is that correct?

[2] A Yes.

[3] Q And you assigned her to the camp. Is that right?

[4] A That's correct.

[5] Q And you state in approximately the middle of the
[6] second paragraph, in an effort to facilitate the orderly
[7] running of the institution while still allowing Mr. Reynoso [8] to
comply with the terms of the order of protection, per [9] your
agreement, you will be reassigned as camp officer upon [10] your
return.

[11] Do you see that?

[12] A Yes.

[13] Q But what agreement did Ms. O'Donnell make with you
[14] that she would be assigned to the camp?[15] A There was a phone call made by her supervisor,
[16] Mr. Gagnon asking her or requesting her however how he
[17] mentioned, again, I advised him that if she was willing to
[18] come back to work, you know, to have Mr. Gagnon call her
and [19] see if she would go to camp and at that particular time,
she [20] did agree to go to the camp.

[21] Q And why did you want to assign her to the camp?

[22] A I have, I don't know. It was a different [23] facility. She
was out of, well, when I say I don't know, my [24] recollection of
this event is Ms. O'Donnell had been out of [25] work for a period
of time.

[1] Q At any time.

[2] A I put restrictions on both of them to start out [3] with. I
wouldn't say restrictions, I would say limitation [4] duties to make
sure that fifty yard restraining order was in [5] effect and then later
on, they were lifted.[6] Q Why did the restrictions have to be put on both of
[7] them?

[8] Why not just put the restrictions on Officer [9] Reynoso?

[10] A I felt only, it was put on Reynoso, but I felt [11] that both
staff members had an obligation to keep that fifty [12] yard
distance.[13] Both of them were aware of the restraining order. [14] I felt
you know, it was only fair that both of them should [15] abide by
that restraining order.[16] It's both responsibility in my mind that if either [17] one came
into contact with one another within that fifty [18] yards, they
needed to report it.[19] Q So you believe that Colleen was responsible for
[20] ensuring that the restraining was enforced?[21] A No. I believe she had an obligation that she was
[22] aware of the restraining order. That if she did come in
[23] contact, I couldn't guarantee a fifty yard distance no
[24] matter if I put them in the mailroom, the camp or the
[25] institution.[1] Mr. Reynoso is on a job inside the institution, if [2] I remember
correctly.

[3] Q On a job?

[4] A Inside.

[5] Q A specific assignment, do you mean?

[6] A Well, he was working inside. Either the mailroom [7] or he
could have been working here at the time. I don't [8] recall where
his job assignment was.[9] Fifty yards from this institution is the camp. [10] That's why I
offered her the camp.[11] I couldn't offer her the mailroom. This is after [12] the incident
in the mailroom, if I'm not mistaken.[13] Q And when Ms. O'Donnell returned to work was she,
[14] in fact, placed at the camp?

[15] A I don't recall. I don't remember that.

[16] Q Okay. I think I already asked you this but do you
[17] have the authority to transfer a staff member to another
[18] institution?

[19] A No.

[20] Q Who has the authority to do that?

[21] A That would have to go through the Regional [22] Director
for approval.[23] Q Okay. Did you put restrictions on Ms. O'Donnell [24] with
regards to signing up for overtime?

[25] A At the beginning or the end?

[1] I couldn't guarantee. I could just do the best [2] job I could of
implementing that restraining order. But I [3] couldn't stop one or
the other party from bumping into one [4] another for whatever
reason and I felt a staff person, each [5] staff person has an
obligation and that they both knew what [6] the restraining order
was.[7] So in making decisions on jobs, my job is to make [8] sure
everybody is safe and that is what I felt most [9] comfortable with.[10] Q So you could never ensure that the restraining [11] order
would be complied with. You could only do the best [12] that you
could?[13] A That's correct. I couldn't stop one of them from
[14] bumping into one another. If they chose to do that.

[15] (Exhibit No. 28 marked for [16] identification.)

[17] MS. MCDONALD: Okay. Let me show you this.

[18] THE WITNESS: Okay.

[19] BY MS. MCDONALD:

[20] Q Do you recall that document?

[21] A Yes I do.

[22] Q What is that document?

[23] A The, it was a memo to Colleen and there was a memo
[24] to Reynoso. This memo is to Colleen, indicating that the
[25] Abuse and Prevention Order against David Reynoso was
vacated

BSA

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[1] and that accordingly, all parties involved would now be
 [2] placed on regular duty status.
 [3] There would be no further accommodations regarding [4] this
 matter.
 [5] Q And what is the date of this letter?
 [6] A April 23, 2004.
 [7] Q And what was the date that the Abuse and [8] Prevention
 Order was vacated?
 [9] A I don't have it in front of me, I don't know.
 [10] Q In the first line?
 [11] A Oh, okay. On April 27th.
 [12] Q 2004?
 [13] A 2004.
 [14] Q So from April 9 of 2002 through April 22, 2004,
 [15] Officer Reynoso was subject to an Abuse Prevention Order, a
 [16] restraining order?
 [17] A That's correct.
 [18] Q And once that restraining order was lifted, there [19] were
 no further accommodations made concerning this matter?
 [20] MR. WILMOT: Objection. You can answer.
 [21] THE WITNESS: Not that I'm aware of.
 [22] MS. MCDONALD: Okay. I think I'm almost done. If [23] you
 want to take a five minute break to see if I've got [24] anything
 else?
 [25] MR. WILMOT: Is that what - okay.

[1] A April 20, 2004 and she signed on it on April 19, [2] 2004.
 [3] Q Okay. And you received this proposal?
 [4] A I received
 [5] Q Did you receive this proposal?
 [6] A Yes.
 [7] Q And did Ms. O'Donnell respond to this proposal?
 [8] A Yes she did.
 [9] Q Did you take into account her response in
 [10] determining what discipline she should be administered?
 [11] A Yes.
 [12] (Exhibit No. 30 marked for [13] identification.)
 [14] MS. MCDONALD: Let me show you this document.
 [15] THE WITNESS: Okay.
 [16] BY MS. MCDONALD:
 [17] Q And do you recognize this document?
 [18] A Yes.
 [19] Q And what is this document?
 [20] A This is Notice of Proposed Suspension Notification
 [21] that I give staff that I considered the case and that - [22] It's a
 decision letter.
 [22] Q And what was your decision with regard to
 [23] Ms. O'Donnell's AWOL charges?
 [24] A Ms. O'Donnell brought up, my decision was based on

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[1] MS. MCDONALD: Okay.
 [2] (Off the record at 2:29 p.m.)
 [3] (On the record at 2:42 p.m.)
 [4] BY MS. MCDONALD:
 [5] Q Was there an investigation conducted when
 [6] Ms. O'Donnell returned to work in November 2003 in regard to
 [7] her AWOL?
 [8] A Yes.
 [9] Q And who conducted that investigation?
 [10] A I'm not sure.
 [11] (Exhibit No. 29 marked for [12] identification.)
 [12] MS. MCDONALD: Okay. Let me show you this
 [13] document.
 [14] THE WITNESS: Okay.
 [15] BY MS. MCDONALD:
 [16] Q Do you recognize that document?
 [17] A Yes.
 [18] Q What is that document?
 [19] A It's a proposal for a thirty day suspension for
 [20] excessive, unauthorized absence, failure to follow leave
 [21] procedures.
 [22] Q To Ms. O'Donnell?
 [23] A Correct.
 [24] Q And what is the date of-

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[1] Ms. O'Donnell's response to me which was she had a medical
 [2] condition that she did not want staff to be aware of and I
 [3] told her that if she could provide me medical documentation,
 [4] I would take that into consideration and be held [5] confidential
 and she brought in the doctor's note. It was [6] held confidential.
 [7] That's what I took into consideration and that's [8] why I gave
 her the letter of reprimand instead of the thirty [9] day suspension.
 [10] Q So she readily provided you with medical
 [11] documentation when you discussed the issue with her?
 [12] A At that particular time, yes.
 [13] Q And did she relate to you that she had been [14] advised
 not to provide medical documentation previously?
 [14] A I don't know if it was during that period of time. [15] She
 did mention that she, I think it was during that time, [16] that she
 said got bad advice from her attorney.
 [17] Q Not me, right?
 [18] A Mr. Rizzitelli. Let's clarify that.
 [19] MS. MCDONALD: Thank you.
 [20] (Exhibit No. 31 marked for [22] identification.)
 [21] THE WITNESS: Okay.
 [22] BY MS. MCDONALD:
 [23] Q Do you recognize that-

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[1] A Yes.
 [2] Q Document?
 [3] A Yes.
 [4] Q And what is that document?
 [5] A This is just to notify her that my decision in, to [6] let her know what my decision was in writing and to close [7] out the case.
 [8] Q And is this her actual letter of reprimand that [9] was placed in her personnel file?
 [10] A Yeah, uh, I don't know.
 [11] Q It says that a copy of this letter will remain in [12] her personnel file.
 [13] A Is it there or not, I don't know. I'm sorry.
 [14] Q Oh, that's okay. Maybe I wasn't clear. I just [15] wanted to know if this was the actual discipline letter.
 [16] A This should be the actual discipline letter.
 [17] Q So there was no suspension, there was simply this letter placed in her file?
 [18] A That's correct.
 [19] MS. McDONALD: Okay. I'm done.
 [20] EXAMINATION BY MR. WILMOT:
 [21] Q Okay. I've just got a couple of questions. You testified earlier begin as Warden in December of 2002, correct?
 [22] A No.

[1] to 3:30 and I changed Mr. Reynoso's schedule, he was working [2] day shift. I moved him to day shift to night shift. Night [3] shift from 4:00 to 12:00.
 [4] Q I am going to show you what has been previously [5] identified by Ms. O'Donnell in her deposition. This is [6] Exhibit No. 29.
 [7] Do you recognize that document?
 [8] A Yes I do.
 [9] Q And can you identify what it is.
 [10] A It's changing of the schedule. And actually I [11] changed it in accordance with this document.
 [12] She was working Monday through Friday shift, but I [13] did change the time from 6:00 a.m. to 2:30 p.m.
 [14] Q Okay. So based on this document, it shows that [15] Ms. O'Donnell's schedule was changed to that, 6:00 to, I'm [16] sorry?
 [17] A 2:30 p.m.
 [18] Q To 2:30. Okay. And does that document state [19] anything else as to limitations or changes with regard for [20] assignment you made?
 [21] A Yes it does.
 [22] Q What else does it say?
 [23] A It states that if you plan to work outside these [24] hours for any reason, overtime, you must notify your [25] supervisor prior to working.

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 [1] Q When did you begin as Warden, I'm sorry, of FMC Devens?
 [2] A December 2000.
 [3] Q 2000, sorry. Did you actually hire Officer [5] Reynoso?
 [4] A No.
 [5] Q He was here before you began as Warden?
 [6] A Yes.
 [7] Q Jumping forward to the April 8, 2002 incident. [10] You testified that you changed Officer Reynoso and [11] Ms. O'Donnell's work schedules.
 [12] Do you remember that testimony?
 [13] A Yes.
 [14] Q Can you state again why you changed their [15] schedules?
 [15] A The reason I changed their schedules was when I [16] received the restraining order and the alleged assault, [17] that's when I decided I had to separate both parties from [18] different job areas or different job sites.
 [19] Q Do you remember what you changed Ms. O'Donnell's [20] schedule to?
 [20] A Ms. O'Donnell was working day shift and so I [21] changed her schedule by half an hour.
 [21] Q Do you know to what times?
 [22] A I think if I recall correctly she worked from 7:00

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 [1] You are not to contact in person or telephonically [2] or associate with David Reynoso, Intelligence Officer at any [3] time.
 [2] The schedule will remain in effect until further [5] notice.
 [3] Q Okay. So, anything else in this document that you [7] - any changes that you made to Ms. O'Donnell's assignment.
 [4] A No.
 [5] Q Okay. So based on that document, in your memory, [6] the only changes you made to Ms. O'Donnell's assignment here [11] at FMC Devens, was with regard to her schedule and her [12] requirement to notify supervisors that when she wanted to [13] perform overtime work.
 [6] A That's correct.
 [7] Q Do you also, did you also limit her to work in the [8] mailroom?
 [8] A Yes.
 [9] Q Does that letter state that?
 [10] A Yes.
 [11] Q Okay. So the changes you made with regard to [12] Ms. O'Donnell was that one, she had to continue to work in [13] the mailroom, the changes in her time as you said, the half [14] hour change and that she had to notify supervisors when she [15] wanted to work overtime?
 [16] A That is correct.

[1] Q Anything else, any other restrictions or [2] limitations that you - or changes that you placed on [3] Ms.O'Donnell's work here at FMC Devens?

[4] A No.

[5] Q Did her pay change in any way?

[6] A No.

[7] Q Did her access to certain benefits change in any [8] way?

[9] A No.

[10] MR. WILMOT: Okay. Could you mark this? I am [11] going to show you what has been marked as Winn Exhibit No. [12] 33.

[13] (Exhibit No. 33 marked for [14] identification.)

[15] BY MR. WILMOT:

[16] Q Do you recognize that document?

[17] A Yes.

[18] Q Can you identify what it is?

[19] A It's a letter to Mr.Reynoso regarding his [20] schedule and assignment.

[21] Q And does that document - any changes, if any, [22] that you made with regard to Mr.Reynoso's work here at FMC

[23] Devens?

[24] A Yes.

[25] Q Can you identify for me what changes were made to

[1] No. 29, anywhere in this letter does it say that [2] Ms.O'Donnell was prevented from working overtime?

[3] A No.

[4] Q Okay. What were the effective dates of or - [5] well, let me break them up.

[6] What was the effective date of Ms.O'Donnell's, [7] the changes to Ms.O'Donnell's work here at FMC Devens?

[8] A April 15, Monday, April 15, 2002.

[9] Q What was the effective date of the changes to

[10] Mr.Reynoso's work here at FMC Devens?

[11] A Monday, April 15, 2002.

[12] Q Now the incident occurred on April 8, 2002. [13] Correct?

[14] A Correct.

[15] Q Why was there - what happened in between or [16] strike that.

[17] Why didn't the changes go into effect immediately, [18] I guess, after April 8, 2002 or it looks like there's about [19] a week lapse in time?

[20] A Both of them were given either annual leave or

[21] administrative leave until that particular day of Monday, or [22] their days off coincided with the admin leave or regular [23] leave.

[24] Therefore, I knew both of them would not come to [25] the institution and the Workplace Violence Committee had met

[1] Mr.Reynoso's work at FMC Devens that are documented in that [2] Exhibit No. 33?

[3] A At the time of the incident, he was working day [4] shift. So I changed him from day shift to evening shift.

[5] Q Until what time?

[6] A His day shift was, could have been 7:30 to 4:00 or [7] 8:00 to 4:00. His, I don't know what his days off were at [8] the time but I put him on a Monday through Friday schedule [9] from 4:00 p.m. to 12:00 p.m. and also not to arrive at the [10] institution prior to 3:30 p.m.

[11] He would not be permitted to work an armed post [12] until resolution of the pending criminal charges against [13] him.

[14] If he planned to work outside these hours of [15] overtime again, he would have to notify his supervisor prior [16] to the shift.

[17] He wasn't to contact in person or telephonically [18] or associate with Colleen O'Donnell at any time.

[19] Q Okay. Would it be a fair statement for me to make [20] that other than the limitations on their physical location [21] here at FMC Devens, that the changes that you made with [22] regard to Mr.Reynoso and Ms.O'Donnell's work here at FMC

[23] Devens was identical?

[24] A Yes.

[25] Q Okay. And just to refer back to Colleen Exhibit

[1] and the investigation had been forwarded.

[2] The restraining order was received and I knew [3] basically the facts of the case and I knew I had some time [4] to devise a plan to make it safe for both individuals to [5] come into the institution and that was the date that they [6] came back to work.

[7] Q Okay. So just so I'm clear, is it your testimony [8] that after April 8, 2002, neither Mr.Reynoso or [9] Ms.O'Donnell returned to work that work week?

[10] A That is correct. That I'm aware of.

[11] Q And they both returned back to work, returned back

[12] to duty on April 15, 2002?

[13] A That's correct.

[14] Q When they returned back to work on April 15, 2002,

[15] is that the date that these changes to their work began?

[16] A That is correct.

[17] Q So when, for example, Mr.Reynoso returned back to

[18] work on April 15, 2002, he returned to this new shift?

[19] A That is correct.

[20] Q Okay. When you made the decision to change

[21] Ms.O'Donnell's work schedule by the half hour as you

[22] testified, and to limit her to the mailroom and required her

[23] to notify her supervisor if she wanted to work overtime, was

[24] her sex or gender a factor in that decision?

[25] A No.

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[1] Q Okay. Now you gave some testimony before. I'll [2] just see those exhibits there. Thank you.
 [3] You gave some testimony before about the Workplace
 [4] Violence Committee.
 [5] Do you remember that testimony?
 [6] A Yes.
 [7] Q And you said then that you received [8] recommendations from them and that thereafter, you received [9] the Protective Order.
 [10] Do you remember that testimony?
 [11] A Yes.
 [12] Q Let me show you what you have already testified to [13] and has been marked as Exhibit 4 and 5.
 [14] Just bring your attention first to Exhibit 5 which [15] you identified earlier as the first recommendations from the [16] Workplace Violence Committee that was convened after this [17] April 8, 2002 incidence.
 [18] Do you know when you received this memo?
 [19] A This memo?
 [20] Q Exhibit 5, yes?
 [21] A That morning.
 [22] Q That morning. Which morning would that be?
 [23] A On April 9, 2002.
 [24] Q And the second memo that you identified which has [25] been marked as Exhibit 4 and it's the second memo from the

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[1] There's some handwritten language here on the [2] order.
 [3] Do you see that?
 [4] A Yes.
 [5] Q What does that say?
 [6] A You may lawfully attend work but must remain fifty [7] yards from the plaintiff.
 [8] Q Okay. So what was your understanding of that [9] statement when you read it?
 [10] A That Mr. Reynoso could return to work. But must [11] remain fifty yards from Ms. O'Donnell.
 [12] Q when you decided to change the schedules of [13] Ms. O'Donnell and Mr. Reynoso in the way that you did make [14] the changes, did you do that, did you make that decision [15] before or after you received the restraining order from the [16] Court?
 [17] A I made that decision when I received that [18] restraining order.
 [18] Q Okay. You also testified before as to, you stated [19] before that an investigation of an incident like this would [20] not occur until after adjudication.
 [21] Why is that?
 [22] A The investigation would be initiated until after [24] the adjudication based upon if the person was found [25] innocent, then we would have to - if he was found guilty

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[1] Workplace Violence Committee, do you know when you received [2] that memo?
 [3] A April 9, 2002.
 [4] Q So you received them both on the same day?
 [5] A Right. Yes.
 [6] Q Now do you know whether or not the Workplace
 [7] Violence Committee had in its possession or was aware that [8] there was a protective order entered with regard to [9] Ms. O'Donnell and Mr. Reynoso?
 [10] A At this time when I received these, no.
 [11] Q Okay. So they did not have the restraining order?
 [12] A No. But if I had them, they would have received; [13] the committee would have received the restraining order.
 [14] Q So they made these recommendations to you not [15] knowing there was a restraining order issued with regard to [16] Ms. O'Donnell and Mr. Reynoso?
 [17] A That's correct.
 [18] Q Okay. All right. Let me show you that has been [19] previously identified by Ms. O'Donnell and you identified [20] the same document here today. In the O'Donnell deposition, [21] it is Exhibit 27.
 [22] And this is the restraining order that you [23] testified to that was issued on April 9, 2002.
 [24] Were there, can you identify for me whether or not [25] on that order, the Court, strike that.

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[1] during the investigation but then found innocent at the [2] Court hearing, we would have to go back and provide back pay [3] and benefits to that employee.
 [4] So the Bureau waits until after adjudication and [5] the final disposition in the Court hearing before initiating [6] an investigation.
 [7] Q Okay. Now it wasn't until almost the following, [8] the beginning of the next year that the investigation [9] started.
 [10] Is that correct?
 [11] A That's correct.
 [12] Q And you just stated as to why the Bureau waits [13] until after the adjudication.
 [14] Was that delay in the beginning of the [15] investigation, did it have anything to do with the fact that [16] Ms. O'Donnell is a woman?
 [17] A No.
 [18] Q Okay. Now you identified previously some memos [19] that you received from Ms. O'Donnell.
 [20] (Pause)
 [21] And they're marked as Exhibits 15 and 16. Exhibit [22] 15 is the memo you identified from Ms. O'Donnell's that's [23] dated May 13, 2002 and Exhibit 16 is the memo you identified [24] from Ms. O'Donnell dated June 10, 2002. Both which you said [25] that at some point, you received as you became aware of.

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[1] After this second memo, Exhibit 16, June 10, 2002, [2] did Ms.O'Donnell ever complain to you again about the fact [3] that she was working at the Bureau and Mr.Reynoso was still [4] employed and allowed to work here at the Bureau of Prisons?
 [5] A No.
 [6] Q Did she ever complain after this June 10, 2002 [7] memo about the conditions under which she had to work?
 [8] A No.
 [9] Q Did you here anything else from Ms.O'Donnell [10] after this memo concerning this incident or you know, the [11] circumstances surrounding she and Mr.Reynoso?
 [12] A No, I, not me. She never said anything to me.
 [13] Q Okay. Do you remember when you next heard any [14] additional, anything new or any new complaints or issues [15] arising out of the situation between she and Mr.Reynoso?
 [16] The next time?
 [17] A The only other complaint was everything was going [18] fine. The situation was going fine. The only other [19] complaint was the mailroom incident in June. I think it was [20] June.
 [21] Q The mailroom incident?
 [22] A Yeah.
 [23] Q What do you mean the mailroom incident?
 [24] A Where there was righting on the wall.
 [25] Q All right.

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[1] A She didn't approach me about it. But there were [2] rumors that she was accusing Reynoso of doing that.
 [3] Q Well, that didn't happen the same year as the [4] incident, correct?
 [5] A Right.
 [6] Q And prior to the mailroom incident as you call it, [7] and I think you gave some testimony to this.
 [8] Before that, you did have the issue of when there [9] was a hearing with regards to Mr.Reynoso, correct?
 [10] A I'm sorry. Repeat the question.
 [11] Q Was there a hearing with regards to Mr.Reynoso [12] about the allegations that Ms.O'Donnell made that he kicked [13] by Mirror Lake?
 [14] A Was there a hearing?
 [15] Q correct. Let me show you a document here. I am [16] going to show you what has been previously identified as [17] Exhibit 37.
 [18] Ms.O'Donnell identified that document at her [19] deposition and it identifies that on January 3, 2003 that [20] there was a hearing on the charges that were filed against [21] Mr.Reynoso?
 [22] A Correct, there was a hearing.
 [23] Q Okay. So in answer to my question, the memo that [24] is marked as Exhibit 16 which is June 2002, between the time [25] of this memo and this hearing which occurred in January

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[1] 2003, did you hear anything from Ms.O'Donnell direct or [2] indirectly, concerning the circumstances surround she and [3] Mr.Reynoso working here at FMC Devens?
 [4] A No.
 [5] Q And how did you become aware of the hearing [6] concerning the charges against Mr.Reynoso?
 [7] A Rumors were flowing around the institution. I [8] know there was a hearing date. And I got the final [9] disposition through my, not my, but the Bureau's attorney [10] requesting the Court document which we had to pay for.
 [11] Q And when did you learn of the disposition of the [12] charges against Mr.Reynoso?
 [13] A I'd have to, well, it was that day or the day [14] after.
 [15] Q Okay.
 [16] A I don't know the exact date.
 [17] Q Okay. Now after that incident, or after that [18] hearing on January 3, 2003, did you speak to Ms.O'Donnell [19] around that time?
 [20] A Not that I recall. No.
 [21] Q Was Ms.O'Donnell working at that time? January [22] 3, 2003?
 [22] A No.
 [23] Q Where was she?
 [24] A She had been on leave without pay, sick leave,

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[1] annual leave or day off.
 [2] Q The day of the incident, I mean, the day of the [3] hearing?
 [4] A Correct. To the best of my knowledge.
 [5] Q And did she return to work at some, soon [6] thereafter or the day after the hearing, was she back here [7] at work?
 [8] A I don't remember seeing Colleen O'Donnell that [9] week.
 [10] Q The week of the hearing?
 [11] A Right.
 [12] Q Okay. Let me show you what has been previously [13] identified in Colleen's deposition as Exhibit 39. The [14] January 8, 2003 letter from you to her.
 [15] Do you recognize that document?
 [16] A Yes.
 [17] Q And what are you stating in that letter?
 [18] A I'm stating that effective Monday, January 13, [19] 2003; you will be assigned you regular duties at ISM.
 [20] Your scheduled duties will be Monday through [21] Friday, 9:30 a.m. to 6:00 p.m. If you plan to work outside [22] these hours for any reason, you must notify your supervisor [23] in advance.
 [24] This schedule and restrictions will remain in [25] effect until further notice.

[1] Q Now there's a blank line there for a signature. [2] Whose signature was that line made for?
 [3] A For Ms.O'Donnell.
 [4] Q I notice it's blank. Do you know if this letter [5] was communicated to Ms.O'Donnell, delivered to her, sorry?
 [6] A I don't know if it was delivered or not. She [7] received this letter.
 [8] Q Okay. If I told you that Ms.O'Donnell had [9] testified that after the hearing on January 3, 2003, she did [10] not return back to work.
 [11] Would that comport to your memory or refresh your memory as to what happened at that time?
 [12] A On January, was it January 3rd?
 [13] Q Mm-hmm.
 [14] A I don't know if she reported back to work or not. [16] I don't recall.
 [15] Q Okay. I am going to show you what has been previously identified as Colleen Exhibit No. 40.
 [16] It is an exhibit in your deposition today. I just [20] can't find it at this time. But Colleen's Exhibit No. 40 is [21] a – she previously identified as well as I believe you did, [22] a January 8, 2003 note from Dr.George Milowe?
 [23] A Okay.
 [24] Q Now does that refresh your memory whether or not Colleen was working or was out of work early January 2003?

[1] A Well, according to this memo or according to this doctor's note she was unable to work and it was dated [3] January 8, 2003. So given that period of time, she was not [4] able to work. So she couldn't have been at work.
 [5] Q Okay. I found the exhibit that I wanted to refer [6] to that was introduced today. The one you just referred to [7] was Colleen Exhibit No. 40 which is the same as your Exhibit [8] No. 27.
 [9] You also gave testimony as to Exhibit 19. There [10] was some confusion as to what was the first doctor's note [11] that you received concerning Ms.O'Donnell.
 [12] On Exhibit No. 27, can you identify what the date [13] is of that note?
 [14] A January 8, 2003.
 [15] Q And what is the date on Exhibit No. 19?
 [16] A January 31, 2003.
 [17] Q Okay. Does that refresh your memory as to which [18] note you received first?
 [19] A I received this one first. The Exhibit 27 first.
 [20] Q Okay. And what did you with Exhibit No. 27 when [21] she received it?
 [22] A What this note was given, if I'm not mistaken, to [23] a staff psychiatrist on January 8, 2003 for interpretation.
 [24] Q And who is that psychiatrist that you gave it to?
 [25] A Dr.Fletcher.

[1] Q Do you know if he responded to Colleen with [2] regards to that note?
 [3] A Did he respond or did I?
 [4] Q Did you or anyone at your direction respond to Colleen with regards to that note dated January 8, 2003?
 [6] A We responded requesting additional medical information.
 [8] Q When you say we, can you identify who?
 [9] A I can't remember.
 [10] Q Okay, I am going to show you what is marked as Colleen Exhibit No. 41. I will present to you that Colleen identified that in her deposition.
 [13] It's a memo from Steve Gagnon to her dated January [14] 9, 2003.
 [15] A That's correct.
 [16] Q Can you read that or have you read it?
 [17] A I've read it.
 [18] Q Okay. And that memo refers to a phone conversation with Ms.O'Donnell on January 9, 2003.
 [20] A I, actually, well, Steve explained to her that I [21] wanted more written, I wanted a release from her doctor so [22] our doctor at the institution could speak to her doctor [23] regarding the medical documentation received which was the [24] January 8th one.
 [25] The reason I wanted that, the reason was to

[1] adequately address her, any accommodation or whatever that [2] she requested.
 [3] Q Okay. And what time does Steve Gagnon say that he [4] spoke with Colleen requesting that additional information?
 [5] A Approximately 8:45 a.m.
 [6] Q Okay. Do you know what time you received the note [7] from Ms.O'Donnell's doctor which was dated January 8, 2003?
 [8] A I never received any note.
 [9] Q The note that you identified as Exhibit 27?
 [10] A Oh, when did I receive this note? January 8, [11] 2003.
 [12] Q Do you remember what time of day you received [13] that?
 [14] A No, I don't recall the time of day.
 [15] Q At the top of there, there is a fax line. Do you [16] see that?
 [17] A Yes.
 [18] Q What is the time of the fax?
 [19] A 18:20.
 [20] Q What would that be in –
 [21] A 18:20 has got to be around 6:20, is that right?
 [22] Military time.
 [23] Q 18:20 will be military time, right?
 [24] MS. MCDONALD: Aren't you supposed to know that?
 [25] THE WITNESS: This isn't military. Let's see.

[1] MR. WILMOT: 6:20?
 [2] THE WITNESS: Yeah.
 [3] BY MR. WILMOT:
 [4] Q So Steve called her the next morning. What time [5] does Steve get in in the mornings or what time did he get in [6] in the morning at that time?
 [7] A He works day shift so I would assume 7:00, 7:30 to [8] 4:00.
 [9] Q Okay. Let me show you what has been previously [10] identified as Exhibit 42 in Ms.O'Donnell's deposition and I [11] represent to you that Ms.O'Donnell identified that document [12] as a letter from Cindy Lord to her dated January 9, 2003.
 [13] Can you take a second to just read what that [14] document says?
 [15] A Okay.
 [16] Q What does the first page of that document, what is [17] it stating?
 [18] A Basically it's saying we're requesting [19] authorization to contact the physician to release [20] information to us so we can determine medical or physical [21] ability to safely perform essential functions of her [22] position at ISM.
 [23] And it says please sign and return attached [24] release letter no later than January 15, 2003.
 [25] Q Okay.

[1] A If you do not sign and return the release, we will [2] base further decisions regarding your ability to safely [3] perform your essential functions of your position on the [4] information that is currently available and there is an [5] attachment for her to sign.
 [6] Q Okay. So after receiving the note from Dr.Milowe [7] on January 8, 2003, Cindy Lord and Steve Gagnon contacted [8] her. Gagnon verbally on the telephone and Cindy by letter [9] in response to that note, correct?
 [10] A Correct.
 [11] Q And did they do so at your direction?
 [12] A Yes.
 [13] Q Okay. Do you know if Ms.O'Donnell responded to [14] either, strike that.
 [15] Do you know if Ms.O'Donnell provided the [16] information sought by Steve Gagnon in that phone call that [17] he documents soon after that conversation?
 [18] A No, we didn't receive any documentation.
 [19] Q Do you know if Ms.O'Donnell responded to [20] Ms.Lord's letter dated January 9, 2003?
 [21] A No, she did not respond.
 [22] Q Okay. Now you gave some testimony earlier. Let [23] me try to clear some of this stuff.
 [24] Before I go there, let me show you what you [25] earlier spoke about. This is Exhibit 19. You identified it

[1] as a letter from Dr.Milowe to Steve Gagnon?
 [2] A Correct.
 [3] Q Now that letter is from Colleen's doctor, correct?
 [4] A Correct.
 [5] Q Can you identify for me what accommodation the [6] doctor claims Colleen needed in order to return back to [7] work?
 [8] A Working in the same environment as her assailant [9] merely intensifies her symptoms and does not give her a [10] chance to heal. Common sense and good will would dictate [11] that Ms.O'Donnell not be required to work in the same [12] facility, at the same time as Mr.Reynoso.
 [13] And then it goes on, she receives good therapy [14] from me and sees a psychotherapist as well. However, [15] recovery is unlikely until the two are separated and [16] Ms.O'Donnell is allowed to go through the hearing process. [17] Until then she will remain totally disabled.
 [18] Q I want you to focus on the second sentence of that [19] paragraph. Particularly, the latter part. Where the doctor [20] says Ms.O'Donnell, he says that she should not be made to [21] work at the same facility at the same time as Mr.Reynoso.
 [22] Do you see that?
 [23] A Yes.
 [24] Q Now, I understand that Ms.O'Donnell was out at [25] that time but if she were back at work, would she have been

[1] working at the same facility, at the same time as [2] Mr.Reynoso?
 [3] A No. Not in accordance with this doctor's note.
 [4] Q I'm sorry?
 [5] A No.
 [6] Q Not according to--?
 [7] A Well, number one, I couldn't, I couldn't separate [8] them in accordance with this doctor's note. The same [9] facility.
 [10] Q Well, maybe you're not following me?
 [11] A Okay.
 [12] Q You had already made certain changes with regards [13] to Mr.Reynoso and Ms.O'Donnell's work here at FMC Devens, [14] correct?
 [15] A Correct.
 [16] Q And so the question is if Ms.O'Donnell was at [17] work at this time, January 31, 2003, under what changes [18] would she be working under had she been at work?
 [19] MS. MCDONALD: Objection.
 [20] BY MR. WILMOT:
 [21] Q Do you understand the question? I'll ask it a [22] different way.
 [22] If Ms.O'Donnell was working on January 31, 2003, [24] what would have been her schedule?
 [25] A Her schedule would have been the same as

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[1] initially. That I gave her initially.

[2] Q Which was what?

[3] A Working in the mailroom and Mr. Reynoso would have been working in an area in the institution or vis-a- versa. [5] It could have changed but they both would have been working [6] in the same facility.

[7] Q If Ms.- you said Ms.O'Donnell would be in the [8] mailroom. What times would she have been working?

[9] A She would have been working 6:00 to 2:30.

[10] Q And where would Mr.Reynoso have been working [11] January 31, 2003?

[12] A He would have been working in this facility on [13] evening watch.

[14] Q When you say this facility, what do you mean?

[15] A The inside of the institution, away from the [16] mailroom.

[17] Q What would his times have been?

[18] A 4:00 to 12:00.

[19] Q Okay. So if Ms.O'Donnell was working January 31, [20] 2003, under the time and the locations which you just [21] specified, would you agree with me that she would not have [22] been working at the same facility at the same time as [23] Mr.Reynoso?

[24] A I would agree with that.

[25] Q Okay.

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[1] from Ms.O'Donnell that Mr.Rizzitelli was indeed her [2] counsel?

[3] A I don't remember the exact date. It was some time [4] in March.

[5] Q I am going to show you what was previously [6] identified as Colleen Exhibit 53. I will represent to you [7] that Ms.O'Donnell identified that document as the letter in [8] which she identifies Mr.Rizzitelli as her lawyer.

[9] What is the date of that document?

[10] A March 4, 2003.

[11] Q Okay. And can you just repeat again the date of [12] the last letter in the sequence that we just went through in [13] the last three letters when that was sent?

[14] A March 10, excuse me, February 10.

[15] Q No, it would be the watermark date?

[16] A March 3, 2003.

[17] Q Okay. So you received the written notification [18] from Ms.O'Donnell after Mr.Rizzitelli sent this last [19] letter which is dated March 3, 2003?

[20] A That is correct.

[21] Q And once you received this letter from [22] Ms.O'Donnell which is Exhibit 53, did you then respond to [23] Mr.Rizzitelli?

[24] A Yes I did.

[25] Q Okay. I'm just referring your attention back to

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[1] (Pause)

[2] Now you gave some testimony as to - these letters [3] here. Winn Exhibit 21 is a letter from Mr.Rizzitelli to [4] you dated February 10, 2003.

[5] Winn Exhibit 22, is the same letter but there's [6] the watermark or whatever you want to call it stating that [7] no response received, resent February 18, 2003.

[8] And the last Winn Exhibit 23, same letter again, [9] with the exception of the watermark stating no response [10] received, resent March 3, 2003.

[11] Why didn't you respond to, well strike that. [12] Between the time of February 10, 2003 which is Exhibit 21 [13] and Exhibit 22 which states that it was resent February 18, [14] why didn't you respond to Mr.Rizzitelli's February 10, 2003 [15] letter in that timeframe?

[16] A Because I didn't have, the reason I didn't respond [17] was because I didn't have written permission from Colleen to [18] pass to, to provide information to Rizzitelli.

[19] Q Okay. And then in the last letter, Exhibit 23, [20] between the timeframe of February 18, 2003, the date of [21] Exhibit 22, why didn't you respond to Mr.Rizzitelli's in [22] that timeframe?

[23] A I had yet to receive permission to provide [24] Mr.Rizzitelli information regarding Ms.O'Donnell.

[25] Q Do you remember when you received authorization

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[1] Exhibit 18. The document that you stated earlier that you [2] had not seen before.

[3] I am going to show you what was marked as Exhibit [4] 48 in Ms.O'Donnell's deposition.

[5] Do you recognize that document or can you identify [6] what it is?

[7] A It's a Request for Voluntary Leave Transfer.

[8] Q If you flip to the second page of that document, [9] And can you compare that page to what was marked as Exhibit [10] 18 in your deposition today.

[11] A They're the exact same.

[12] Q So Exhibit 18 of your deposition today is the [13] second page of Colleen Exhibit No. 48?

[14] A That is correct.

[15] Q Okay. And you said that Exhibit No. 48 of [16] Colleen's deposition is a Request for Voluntary Leave [17] Transfer.

[18] What involvement, if any, do you have in the [19] Voluntary Leave Transfer application process or decision [20] with regard to those applications?

[21] A That's an independent committee that gathers to [22] look at documents and approve or deny any kind of leave [23] transfer program.

[24] I don't have any input on that.

[25] Q Okay. Are you aware that the Voluntary Leave

[1] Transfer Committee that met with regard to Colleen's [2] application, denied her request?
 [3] A I knew it was denied, yes.
 [4] Q What role, if any, did you play in that [5] Committee's decision to deny her request?
 [6] A I didn't have any role.
 [7] Q I'll show you what was marked in Colleen's [8] exhibit, I mean, deposition as Exhibit No. 52.
 [9] Do you recognize that document?
 [10] A Yes.
 [11] Q Could you identify what it is for me please?
 [12] A Ms. O'Donnell is requesting advanced leave, [13] advanced sick leave.
 [14] Q Do you remember what your response was to that [15] request for leave?
 [16] A I denied her leave request.
 [17] Q Do you remember why you denied her leave request?
 [18] A Based upon the doctor's note, she was unable to [19] return to work and there was no end of her medical [20] condition. Therefore, it was denied based upon that and I [21] didn't get any update on her medical condition.
 [22] Q Let me show you what was previously marked and [23] identified. This Exhibit No. 54.
 [24] Do you recognize that document?
 [25] And when I say 54, that's 54 from Colleen's

[1] Excuse me, additionally, I have been informed that [2] on February 11, 2003, you requested the necessary forms from [3] the Safety Office to file Workman's Compensation claim. [4] Another factor which indicates you may not be returning to [5] work.
 [6] Based upon that information, I was unable, I was [7] unable to advance sick leave.
 [8] Q In making that decision that you had denied her [9] request for advanced sick leave, did you consider at all [10] Colleen's sex or gender?
 [11] A No.
 [12] Q I am going to show you what has been marked as [13] Colleen Exhibit 60.
 [14] Do you recognize that document?
 [15] A I remember the memo.
 [16] Q I'll represent to you that Colleen identified this [17] document in her deposition as a memo from her to you through [18] Steve Gagnon requesting sixteen hours of leave without pay [19] or advanced annual leave and it says handwritten at the [20] bottom there, denied per Warden Winn.
 [21] Do you see that?
 [22] A Correct. Yes.
 [23] Q Do you remember why, well before I get there, did [24] you direct the acting warden to deny this request?
 [25] A Yes.

[1] deposition.
 [2] A Yes.
 [3] Q And what is that letter?
 [4] A It's a letter from Ms. O'Donnell indicating that I [5] denied her request for advanced sick leave.
 [6] Based upon your offer of accommodations to work, [7] Based on information, excuse me, on January 27th, you were [8] offered accommodations to work, based on the information you [9] previously submitted.
 [10] To date, you failed to notify me of the [11] accommodations that were offered were acceptable or present [12] any reasonable alternative accommodation.
 [13] In accordance with 5 USC 6307, the agency has the [14] discretion to advance up to thirty days, 240 hours of sick [15] leave to an employee who has a serious disability or [16] ailment.
 [17] In considering whether to advance sick leave, the [18] Department of Justice order on leave administration requires [19] the approving official to consider several factors, [20] including whether or not the employee can be expected to [21] return to work, or to return to duty.
 [22] Based on the medical documentation dated January [23] 31, 2003, there is no indication you would be able to return [24] to duty as your doctor has indicated you remain totally [25] disabled.

[1] Q Do you remember why you decided that this request [2] should be denied?
 [3] A I was at a Warden's Conference and I remembered [4] that, if I remember correctly, I still didn't have the [5] proper documentation.
 [6] Q In making your decision to deny the request in [7] that January 10, 2003 memo, did you consider Ms. O'Donnell's [8] sex or gender?
 [9] A No.
 [10] Q Now do you remember when you became aware, if you [11] did, that Ms. O'Donnell was pursuing an EEO action against [12] the agency?
 [13] A I became aware an EEO action, I don't remember the [14] exact date. She was off duty, whether she was on, she must [15] have been on leave without pay.
 [16] She came to the training center, met with an EEO [17] counselor.
 [18] Q Do you remember when you became aware of that?
 [19] A That day she came in. I don't know the exact [20] date.
 [21] Q Okay. Do you remember who or how you learned that [22] she came in and met with an EEO counselor?
 [23] A A staff member, I can't remember, the staff member [24] came in and advised me that Colleen O'Donnell was at the [25] training center with Ken Nichols filing an EEO complaint.

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[1] Q Do you know if that contact with you is [2] documented?
 [3] A I think I had the person write a memo.
 [4] Q Can you mark those two exhibits please? While the
 [5] reporter is marking those exhibits, I just want you to back
 [6] track briefly for a moment.
 [7] You stated before that you provided the first [8] note, the
 January 8, 2003 note to the psychiatrist here at [9] FMC Devens.
 [10] Do you remember what response, if any, the [11] psychiatrist
 had after reviewing the note?
 [12] A The psychiatrist from the Bureau of Prisons?
 [13] Q Yeah.
 [14] A Just basically, he needed more information to give
 [15] me input whether she can return to work or not or continue
 [16] without pay.
 [17] Whatever she was requesting at the time.
 [18] Q Could you mark this document as well? Did he
 [19] communicate that to you in writing?
 [20] A Yes.
 [21] MR. WILMOT: I am going to show you what has been
 [22] marked as Exhibit No. 36.
 [23] (Exhibit No. 36 marked for [24] identification.)
 [25] BY MR. WILMOT:

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[1] Q Now jumping back again into when you first learned
 [2] that Ms. O'Donnell met with an EEO officer. You stated that
 [3] you asked the person contacted you to put that in writing.
 [4] Do you know why you asked them to put it in [5] writing?
 [6] A Well, I already had put restrictions on both [7] parties and
 I wasn't upset that Ms. O'Donnell was filing an [8] EEO complaint. I
 didn't even know if the EEO complaint was [9] against me.
 [10] What concerned me that she came to the institution [11] on
 her own and Mr. Reynoso could have been in the area.
 [12] That's what I was upset about. He could have been [13] in a
 training class. He could have been around the training [14] center.
 He could have been in the camp.
 [15] And that violated the fifty yard rule. So far as [16] I was
 concerned. Whether she filed an EEO complaint, was
 [17] irrelevant to me whether it was against me or the
 [18] institution. That didn't bother me.
 [19] What bothered me was that she came in on her own.
 [20] MR. WILMOT: I am going to show you what has been
 [21] marked as Exhibit 34 and 35. Take a moment to review those
 [22] and let me know when you're finished.
 [23] (Exhibit Nos. 34 and 35 marked for [24] identification.)
 [25] BY MR. WILMOT:

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[1] Q Do you recognize that document?
 [2] A Yes I do.
 [3] Q Can you identify what it is?
 [4] A It's a memorandum for me from Dr. Fletcher [5] regarding
 Ms. O'Donnell and requesting additional [6] information.
 [7] Q And what does he say with regards to his review of
 [8] Dr. Milowe's note?
 [9] A Well, he's saying I reviewed the letter written by
 [10] Dr. Milowe of January 2003. In this letter there is a
 [11] non-specific diagnosis offered to a post traumatic stress
 [12] disorder and statement that she (Colleen O'Donnell) is
 [13] totally disabled which equally, of a general purpose nature.
 [14] The closing portion that offer speculation of a [15] complete
 reversal of her disability. If certain [16] environmental factors were
 modified, my professional opinion [17] is that the letter does not
 contain significant information [18] to support any facts alleged in
 the letter and that the [19] conclusion that the total disability is
 completely [20] reversible owing to environmental factors is
 inconsistent [21] with the practice of psychiatry.
 [22] I suggest that a formal review of medical records [23] and that
 an independent evaluation of Ms. O'Donnell by an
 [24] independent psychiatrist be initiated for the purpose of
 [25] establishing fitness of duty at FMC Devens.

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[1] Q And the question I'm going to ask you is whether [2] or
 not these memos refresh your memory as to when you [3] learned
 Ms. O'Donnell met with an EEO officer?
 [4] A I remember the day, yeah.
 [5] Q What is the date you learned that Ms. O'Donnell [6] met
 with the EEO officer?
 [7] A I don't remember. The dates are - March 19th. I [8] don't
 know if it was March, I'm sure it was March 19th. Do [9] I know for
 sure if it was March 19th? All I know is that [10] around that time,
 that did occur.
 [11] Q And what is the date in the two memos as to when
 [12] Ms. O'Donnell met with an EEO officer?
 [13] A March 19th at 1:00 p.m. Both memos indicate the
 [14] same day, just approximately, different times?
 [15] Q All right. And of what year?
 [16] A 2003.
 [17] Q Okay. And Exhibit 34 is a memo from whom?
 [18] A From Karen Parrott, the Employee Development
 [19] Manager.
 [20] Q Okay. And Exhibit 35 is a memo from whom?
 [21] A From Patrick Kelly, Employee Development
 [22] Specialist.
 [23] Q Okay. So I'm just referring you back to Exhibit [24] 60 of
 Colleen's deposition. When you made the decision to [25] deny
 her request for advance leave, was the fact that she

[1] Q Okay. Now you testified before as to Colleen was
 [2] ultimately disciplined with a warning placed in her file for
 [3] being AWOL, correct?
 [4] A Correct.
 [5] Q In making the decision to discipline her for being
 [6] AWOL, was the fact that Ms.O'Donnell was a woman, was that
 [7] a factor in your decision?
 [8] A No.
 [9] Q The fact that Ms.O'Donnell was engaged or [10] involved
 in EEO activities within the Bureau of Prisons, was [11] that a factor
 in your decision?
 [12] A No.
 [13] Q You gave some testimony as well, as to
 [14] Mr.Reynoso's discipline for the incident at Mirror Lake
 [15] with Ms.O'Donnell and you said that he was suspended
 [16] without pay.
 [17] Do you remember that testimony?
 [18] A Yes.
 [19] Q Okay. Whose responsibility is it within the [20] agency to
 actually dock pay from an employee's pay if he or [21] she is
 suspended without pay?
 [22] A That would be the Timekeeper.
 [23] Q The Timekeeper?
 [24] A Is the actual one who would key in. From my
 [25] understanding of the situation, it would be the Timekeeper

[1] situation.
 [2] Was the fact or, strike that. Was the fact that [3] Ms.O'Donnell
 is a woman, was that fact a factor in your [4] decision not to
 respond to Mr.Rizzitelli at that time?
 [5] A No.
 [6] Q The fact that Ms.O'Donnell had engaged in, strike [7] that.
 Okay.
 [8] You testified earlier today about discussions with
 [9] Ms.O'Donnell about assigning to the camp.
 [10] Do you remember that testimony?
 [11] A Yes.
 [12] Q Was Ms.O'Donnell ultimately assigned to the camp?
 [13] A No.
 [14] Q Just mark these two documents please.
 [15] COURT REPORTER: I think this is already marked.
 [16] MR. WILMOT: Which document is that? Okay. All [17] right.
 [18] COURT REPORTER: In there.
 [19] MR. WILMOT: Let me see.
 [20] COURT REPORTER: March 6th?
 [21] MR. WILMOT: March 6th, that's correct. It's [22] already in
 there as 25. So if we can switch. Make 38, 37.
 [23] COURT REPORTER: I'm sorry. 37 is already in. [24] I'll put
 38 on - 37 on this one. Yeah.
 [25] BY MR. WILMOT:

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 [1] who would key in the dates you work, the dates you don't
 [2] work.
 [3] Q Is that an administrative function?
 [4] A That's an administrative function.
 [5] Q And it's safe to assume that is not a function [6] that you
 would perform?
 [7] A No.
 [8] Q Do you monitor whether or not such deductions are
 [9] made from employee's pay?
 [10] A No. I do not monitor that.
 [11] Q Okay. So your statement before that Mr.Reynoso
 [12] was not paid at the time of his suspension is based on the
 [13] fact that you suspended him without pay.
 [14] A I suspended him without pay, correct.
 [15] MR. WILMOT: Let's take a break quick.
 [16] MS. MCDONALD: Yes. Hurry.
 [17] (Brief recess.)
 [18] BY MR. WILMOT:
 [19] Q You testified before about the - and we covered [20] it
 just now again about the "delay" in responding to [21] Mr.Rizzitelli,
 his February 10, 2003 letter?
 [22] Do you remember that testimony?
 [23] A Right. Yes.
 [24] Q It says because we had not received authorization
 [25] from Colleen yet to speak with Mr.Rizzitelli about this

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 [1] Q Okay. So again going back to your contact with
 [2] Mr.Rizzitelli, you stated that you did not respond to
 [3] Mr.Rizzitelli until after receiving, you identified this [4] already,
 after receiving Ms.Colleen O'Donnell's letter [5] dated March 4,
 2003 as marked as Colleen Exhibit 53.
 [6] And you stated earlier that you responded to [7] Mr.Rizzitelli
 after receiving this letter from Colleen. [8] Exhibit 53 from her
 deposition.
 [9] Do you know when you first responded to [10] Mr.Rizzitelli?
 [11] A On March 6, 2003.
 [12] Q Okay. So the document that is marked as Winn
 [13] Exhibit No. 25, is this your first contact with [14] Mr.Rizzitelli?
 [15] A Yes.
 [16] Q So two days after receiving Ms.O'Donnell's letter [17] that
 Mr.Rizzitelli was her counsel, you do, in fact, [18] contact
 Mr.Rizzitelli?
 [19] A Yes.
 [20] Q Do you remember when you received Ms.O'Donnell's
 [21] letter authorizing you to speak to Mr.Rizzitelli?
 [22] A March 4, 2003.
 [23] Q Do you remember what time of day you received
 [24] that?
 [25] A At 1:33. Well, it was sent down to Human

BSA

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[1] Resources, so I probably got it a little after that.
 [2] MR. WILMOT: Okay. And I've marked her as Exhibit [3] 37, another document.
 [4] (Exhibit No. 37 marked for [5] identification.)
 [5] BY MR. WILMOT:
 [7] Q Do you recognize that document?
 [8] A Yes.
 [9] Q Can you identify what it is?
 [10] A It's dated March 21, 2003 to Mr. Rizzitelli from [11] me.
 [12] Q Okay. So you did have contact with Mr. Rizzitelli
 [13] concerning Ms. O'Donnell after she finally authorized you to
 [14] speak to him.
 [15] A Yes.
 [16] Q Okay. You testified early this morning that
 [17] Ms. O'Donnell was the only person that you had out on admin
 [18] leave or administrative leave, and was required to call into
 [19] her supervisor during that leave.
 [20] Do you remember that?
 [21] A Yes.
 [22] Q Why did you require Ms. O'Donnell to call into her
 [23] supervisor during her administrative leave?
 [24] A Because during that period of time, we, meaning
 [25] myself, Ms. Lord and Mr. Gagnon, attempted on numerous

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[1] MS. MCDONALD: Highly unlikely but --
 [2] MR. WILMOT: And pursuant to our protective order, [3] you know, there was a lot of testimony here today about [4] other employees that would be considered confidential under [5] that protective order so --
 [6] You know, would you be agreeable to our just [7] marking the entire deposition as confidential or does it [8] need to be specific pages?
 [9] It would be easier if we could stamp the first [10] page confidential.
 [11] MS. MCDONALD: What's in place? Reynoso, isn't [12] that it?
 [13] MR. WILMOT: That would be it and of course, your [14] client.
 [15] MS. MCDONALD: Yeah, that's fine.
 [16] MR. WILMOT: All right. Thank you.
 [17] (Off the record at 4:31 p.m.)

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[1] occasions to contact Colleen O'Donnell and we cannot get a [2] response through letters, telephones, fax machines, so the [3] stipulation, I did stipulate that she call in so we can [4] provide her information.
 [5] Whether it be a doctor's note or further leave [6] without pay requests and that's why we did it.
 [7] Q Okay. Was the fact that Ms. O'Donnell was a [8] woman, was that a factor in your decision to place that [9] requirement on her?
 [10] A No, it was strictly based on communication.
 [11] Q Was the fact that Ms. O'Donnell was involved or [12] engaged in BEO activities within the Bureau of Prisons, a [13] factor in your decision to place that requirement on her?
 [14] A No.
 [15] Q Was the fact that Ms. O'Donnell had previously [16] requested a work accommodation a factor in your decision to [17] place a requirement on her?
 [18] A No.
 [19] MR. WILMOT: Okay. I guess that's it for me.
 [20] MS. MCDONALD: I don't have any more right now. [21] But I would like to reserve my right to recall the Warden if [22] I have not received those documents which you intend to [23] provide me with.
 [24] I'm probably finished but just in case.
 [25] MR. WILMOT: Okay.

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[1] C E R T I F I C A T E [2] COMMONWEALTH OF MASSACHUSETTS)
) S S. [3] COUNTY OF SUFFOLK)
 [4] I, Marilyn D. Franklin, a Court Reporter and [5] Notary Public, within and for the Commonwealth of [6] Massachusetts, do hereby certify that there came before me [7] on this 15th day of September, 2005, the person hereinbefore [8] named, who was by me duly sworn to tell the truth, the whole [9] truth, and nothing but the truth, concerning and touching [10] the matter in controversy in this cause; that he was [11] thereupon examined upon his oath, and his examination [12] reduced to typewriting, under my direction, and that this [13] deposition transcript is a true and accurate record of the [14] testimony given by the witness.
 [15] I further certify that I am not related to any of [16] the parties hereto or their counsel, and that I am in no way [17] interested in the outcome of said cause.
 [18] Dated at Boston, Massachusetts, this 5th day of [19] day of October, 2005.
 [21] Marilyn D. Franklin
 [22] NOTARY PUBLIC
 My Commission Expires:
 [23] August 18, 2011

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[1] CORRECTION SHEET
[2] DEPOSITION OF DAVID L. WINN [3] PAGE NO. LINE NO.
SUGGESTED CORRECTION [4]

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[1] SIGNATURE OF WITNESS:

[2] I have read the foregoing transcript and the same [3] contains a true and accurate recording of my answers to the [4] questions therein set forth, subject to the change and/or [5] correction sheet(s) attached.

[8]

[9] Deponent